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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 197.

POWHATAN E. CAUSEY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED JULY 8, 1914.

(24,302)

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a UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and Proceedings Had and Done at a Regular Term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on Thursday, November 21st, A. D. 1912, at New Orleans, Louisiana, before the Honorable Don A. Pardee and the Honorable David D. Shelby, Circuit Judges, and the Honorable William T. Newman, District Judge.

POWHATAN E. CAUSEY, Appellant,
versus
THE UNITED STATES OF AMERICA, Appellee.

Be it remembered, that heretofore, to-wit, on the 19th day of August, A. D. 1912, a transcript of the record of the above styled cause, pursuant to an appeal from the District Court of the United States for the Eastern District of Louisiana, was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 2420, and from which the following portions are incorporated into the transcript of the record for the purposes of appeal to the Supreme Court of the United States, as directed in the præcipe of the respective solicitors, to-wit:

1 United States District Court, Eastern District of Louisiana, New Orleans Division (Late Circuit Court).

No. 13257.

UNITED STATES
vs.
JAMES L. BRADFORD et als.

Bill of Complaint.

Filed July 26th, 1904.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Louisiana, Fifth Circuit:

The United States of America, through H. Generes Dufour, Assistant United States Attorney, brings its bill of complaint against Powhattan E. Causey, of the Parish of Ascension, Eastern District of Louisiana, and William H. Wright and James L. Bradford, of the City of New Orleans, in the Eastern District of Louisiana, and thereupon your orator complains and says:

First. That the lands hereinafter described formed part of the Public Domain of the United States and were the property of the United States, and, under various laws of the United States, were subject to homestead entry.

Second. That on March 19, 1900, the said Powhattan E. Causey made homestead entry No. 21,337, for the East half of the Northwest ¼, Northeast quarter of the Southwest quarter, and lot two, Section thirty-three, Township ten, South Range three East, S. E. D. E. of River, New Orleans, Louisiana, Land District; that on August 21, 1901, same was commuted to cash entry, locating thereon Supreme Court scrip certificates, Y12 and Y13, in payment of the purchase price of said land, upon which the Register and Receiver of the United States Land Office in New Orleans duly issued certificates of entry, Nos. 149 and 148, respectively, and thereafter, to-wit, on February 28, 1902, a patent for said lands was issued by the United States to the said Powhattan E. Causey.

Third. That on August 23, 1901, the said Powhattan E.
2 Causey transferred the said lands, amounting to 157.77 acres, to the said James L. Bradford, for the ostensible consideration of eight hundred dollars, and on the following day, to-wit, August 24, 1901, the said James L. Bradford entered into an agreement with the said Powhattan E. Causey, by the terms of which the said Powhattan E. Causey was entitled to redeem 79.83 acres of said land, by the payment of $750 in three certain installments, to-wit, $230 on the 1st of January, 1903; $250 on January 1st, 1904; and the sum of $270 on the 1st of January, 1905, conditioned that the failure to pay any payment would forfeit the said option.

Fourth. That in support of his said application for homestead, the said Causey did depose and declare, in accordance with the statutes and regulations in such case made and provided, that his said application was honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons or corporation; that he was not acting as agent of any person or corporation, nor in collusion with any person, corporation or syndicate, to give them the benefit of the land entered, or any part thereof, or the timber thereon; that he did not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for himself, and that he had not directly or indirectly, made, and would not make, any agreement or contract, in any way or manner, with any person or persons, corporation, or syndicate whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself; which declarations were false and fraudulent, and well known at the time they were made to be so, not only by the said Powhattan E. Causey, but by said William H. Wright and said James L. Bradford, who acted for him in the Land Office, and as his attorneys; and that the said homestead entries were made by said Powhattan E. Causey for the benefit of said William H. Wright and said James L. Bradford, and for the pur-
3 poses and with the understandings hereinafter set forth.

Fifth. That on or about the time the application of said

Causey for said Homestead entry was made, the said James L. Bradford and said William H. Wright were then and there engaged in the prosecution of a scheme to deprive the United States of the title and possession of certain lands in the Parish of Ascension; that, in execution of said scheme, they persuaded various persons, including the said Powhattan E. Causey, to make homestead entries, with the understanding that said various persons, including the said Powhattan E. Causey, upon perfecting the said entries and receiving patents therefor, would transfer and convey to the said James L. Bradford and the said William H. Wright, one half of the lands so patented; or all of the lands so patented, with the pretended right on the part of the said patentees to redeem one half of said lands, all the expenses and costs attending the making of said entry, and the perfection of same, to be paid by the said James L. Bradford and the said William H. Wright, and the services of said Bradford and said Wright in connection with said homestead entries, to be rendered without cost to the said homesteader, the said James L. Bradford being at that time an attorney at law, engaged in practice before the Land Office, at New Orleans, and the said William H. Wright, at the same time being a clerk and confidential agent of said James L. Bradford.

That on the 3rd day of July, 1901, the said Powhattan E. Causey made final proof for the purpose of obtaining a patent to said lands, and at that time produced certain witnesses to swear that he, said Powhattan E. Causey, had not mortgaged, sold or contracted to sell any portion of said homestead; the said final proof being false and fraudulent, as he, the said Causey and the said Bradford and the said Wright then and there well knew, the said Powhattan E. Causey having agreed, as aforesaid, to convey all, or a portion of said lands, to the said James L. Bradford and the said William H. Wright, in accordance with the agreement and understanding aforesaid.

4 Sixth. That the said homestead entry, made pursuant to said illegal, corrupt and fraudulent agreement, aforesaid, was and is null and void, and the patent obtained for said land, was fraudulently and illegally obtained, to the knowledge of all said defendants; that the said Powhattan E. Causey did not comply with the homestead laws of the United States in perfecting his said homestead entry, and said entry was made and perfected in violation of law; that the patent to said land, issued by the United States to the said Powhattan E. Causey, should be cancelled and annulled, the transfer thereof made by said Causey to the said James L. Bradford should likewise be cancelled, annulled and set aside, and the said land should be decreed to be the property of complainant.

All of which acts and doings and pretenses of the said Powhattan E. Causey, said William H. Wright, and said James L. Bradford, are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orator in the premises.

In consideration whereof, in so far as your orator is without remedy in the premises, at law, and to the end that your orator may have such relief as can only be granted by a court of equity, your orator prays:

First. That the patent hereinabove referred to, granted to said Powhattan E. Causey, be cancelled and annulled.

Second. That the transfer made by said Powhattan E. Causey to said James L. Bradford be likewise cancelled, annulled and set aside.

Third. That the land hereinabove described be decreed to be the property of your orator.

May it please your honors to grant unto your orator a writ of subpœna, addressed to the defendants, Powhattan E. Causey, James L. Bradford, and William H. Wright, commanding them, at a time fixed, to appear and answer hereto, not under oath; to abide by and perform all the orders and decrees of this honorable court, in the premises; and that your orator may have such further orders and relief as in the nature of the case, equity and good conscience
5 require; and your orator will ever so pray.

(Signed) H. GENERES DUFOUR,
Assistant U. S. Attorney.

Demurrer of P. E. Causey.

Filed November 17, 1904.

In the Circuit Court of the United States in and for the Fifth Circuit and Eastern District of the State of Louisiana, Sitting in Equity.

No. 13257.

UNITED STATES
vs.
JAMES L. BRADFORD et als.

The Demurrer of Powhattan E. Causey, One of the Defendants Named in the Above-entitled Cause.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill to be true in such manner and form as the same are therein set forth and alleged demurs thereto, and for cause of demurrer shows:

First. That said bill of complaint sets forth and alleges that this defendant made a homestead entry of the lands in said bill described under the homestead laws of the United States and did, in support of his right to make said entry, depose and declare as follows: "Fourth, that in support of his said application for homestead, the said Causey did depose and declare in accordance with the statutes and regulations in such case made and provided, that his said application was honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation that he was not acting as
6 agent of any person or corporation, nor in collusion with any person, corporation or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that he did not apply to enter the same for the purpose of speculation, but

in good faith to obtain a home for himself, and that he had not directly or indirectly made, and would not make any agreement or contract in any way or manner, with any person or persons, corporation or syndicate whatsoever by which the title which he might acquire from the government of the United States would enure in whole or in part to the benefit of any person except himself." Said bill of complaint then alleges and sets fourth that after said entry was made on March 19, 1900, in pursuance and in consequence of said oath of this defendant, that this defendant did on the 3rd day of July, 1901, make final proof for the purpose of obtaining a patent to said lands, and that on the 21st of August, 1901, the original homestead entry was commuted to cash entry "locating thereon Supreme Court certificates Y. 12 & Y. 13 in payment of the purchase price of said lands, upon which the Register & receiver of the United States land office in New Orleans duly issued certificate of entry Nos. 149 & 148 respectively." And that thereafter, to-wit: on August 23, 1901, this defendant transferred the said land, amounting to 157.77 acres to the — James L. Bradford, for the ostensible consideration of $800.00.

If these facts, so alleged in said bill of complaint are true, and for the purposes of this demurrer, this defendant admits the same, then, the original contract between the United States and this defendant, respecting said lands, and growing out of the statutes of the United States, providing for, and authorizing such homestead entry of the public lands, was by consent of both parties thereto, abrogated and abandoned, and another contract, to-wit: that of vendor & vendee, for a price to be paid by one & received by the other, was substituted in lieu thereof, and this defendant thereby and thereafter
7 became released by the United States from all compliance with the provisions of the homestead laws respecting said lands, and from all forfeitures, penalties, or other consequences which would otherwise have attached to the frauds and charges of violations of the homestead laws alleged in the bill against this defendant, or against his witnesses who testified in his behalf on the making and submission of his final proof.

Second. That said bill of complaint sets forth and alleges further that this defendant, after having done all the matters and things set forth under the first head of this demurrer, did then pay and deliver to the United States through their register and receiver of the United States land office in New Orleans, as the cash price and consideration of the lands described in the bill of complaint "Supreme Court certificate- Y. 12 and Y. 13, upon which the register and receiver aforesaid duly issued to this defendant their certificates of entry Nos. 148 and 149. And that thereafter to enforce said certificates, the United States issued patent to this defendant for the said land. But the said complainant fails and omits to return and re-pay, or to offer to return and re-pay to this defendant, before the said land was taken from him and returned to his vendor, the United States, the prices so paid by him for said land, to-wit: said Supreme Court certificates Nos. Y, 12, & Y, 13.

Third. That said bill of complaint fails to set forth and allege that the same has been brought, or authorized to be brought by due and lawful authority of the United States, the alleged complainant therein.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant demurs thereto, and humbly demands the judgment of this court whether he should be compelled to make any further or other answer to the said bill; and
8 prays to be hence dismissed, with his costs and charges in this behalf most wrongfully sustained.

(Signed) POWHATTAN E. CAUSEY.

STATE OF LOUISIANA,
Parish of Ascension:

Powhattan E. Causey makes solemn oath and says that he is the above named defendant, and that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

(Signed) POWHATTAN E. CAUSEY.

Subscribed and sworn to before me this 7th day of November, 1904.

[SEAL.] (Signed) JONAS WEILL, *Not. Pub.*

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

(Signed) J. L. BRADFORD,
Counsel for Defendant.

Order Overruling Demurrers.

Filed April 30, 1906.

United States Circuit Court, Eastern District of Louisiana.

No. 13257.

UNITED STATES
vs.
JAMES L. BRADFORD et als.

This cause came on at a former day to be heard upon the Demurrers of James L. Bradford and of P. E. Causey, two of the
9 defendants filed herein on November 17th, 1904, and was argued by James L. Bradford for the Demurrers and by W. W. Howe, U. S. Attorney for the United States, Complainant herein; and submitted to the Court.

Whereupon, on due consideration thereof, it is now ordered by the Court that the said Demurrers be overruled and that said defendants be given ten days in which to answer.

New Orleans, La., April 30th, 1906.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Answer of Powhattan E. Causey.

Filed June 4th, 1906.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

In Equity. No. 13257.

UNITED STATES
vs.
JAMES L. BRADFORD et als.

The Several Answer of Powhattan E. Causey, One of the Defendants, to the Bill of Complaint of the United States, Plaintiff.

This defendant, now, and at all times hereafter, saving to himself all and all manner of benefit, of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said Bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering says:

As to the matters and things set forth and charged in said Bill in

Paragraph First.

This defendant doth admit that the lands in said Bill described, and which are alleged to have been entered by this defendant under the homestead laws of the United States, were, at that time of the public domain of the United States, and the property of the United States, and that the said land was at that time, under various laws of the United States, subject to homestead entry:

As to the matters and things set forth and charged in said Bill in

Paragraph Second.

This defendant admits that he did, on or about the 19th March, 1900, make homestead entry No. 21,337, in the United States land office at New Orleans, Louisiana, under the homestead laws of the United States, of and for the East half of the North West quarter of Section 33, containing 79.83 acres, and the North East quarter of the South West quarter of said Section 33, containing 39.92 acres, and also Lot 2, being the South East quarter of said South West quarter of said Section 33, containing 38.02 acres, the last two tracts forming, together, the East half of the South West quarter of said Section 33 containing 77.94 acres, and making, with the East half of the North West quarter, a total amount of 157.77 acres, so entered by this defendant; all being in Township 10 South, Range 3 East, in Ascension Parish, Louisiana.

That on or about August 2, 1901, (and not August 21, as erroneously charged in said paragraph), his said original homestead entry was commuted and changed into a cash entry of the lands, by this defendant surrendering and giving up to the United States, in payment for the same, the following certificates of location which had, on July 22, 1899, been issued by the Commissioner of the General Land Office of the United States, by virtue of authority conferred by the Acts of Congress approved June 22, 1860, (12
11 Stats. 85), March 2, 1867, (14 Stats., 544), and June 10, 1872, (17 Stats., 378); to-wit: Certificate Y 12, for 80 acres, which was surrendered in payment for the East half of the North West quarter of said Section 33; and Certificate Y 13, for 80 acres, which was surrendered in payment for the East half of the South West quarter of said Section 33, consisting, as aforesaid, of lot 2, and North East quarter of South West quarter of said Section 33; and thereupon, as evidence of said payment of the price of said land by this defendant, the Register and Receiver of said land office did issue and deliver their certificates of entry, or final certificates, No. 149 for the East half of the North West quarter of Section 33, and final certificate No. 148 for lot 2, and North East quarter of the South West quarter of said section 33 being, as aforesaid, the same as the East half of the South West quarter of said section; which said certificates of location had been regularly assigned to, and were the property of this defendant, according to the Act of Congress approved January 28, 1879, Sec. 1, (20 Stat. 274). That in addition to the payment for said lands as aforesaid, on August 2, 1901, this defendant had, at the time he made his original homestead entry, March 19, 1900, paid to the United States the sum of $13.95. This defendant further admits that on February 28, 1902, the proper and competent officers of the United States at their Capital, in Washington, did, in approval and ratification of the aforesaid purchase of said lands by this defendant, issue and deliver to him, two patents for said lands, (and not one patent, as erroneously charged); one being for the East half of the North West quarter of said section, and the other being for the East half of the South West quarter, and both being for the aggregate amount of 157.77 acres of land, originally entered by this defendant.

As to the matters and things set forth and charged in said bill in

Paragraph Third.

12 This defendant doth admit that he has, since he made his final proof and commutation for, and final entry of his said land, and since he received from the land officers the said evidences of title, made and entered into, in good faith, and for full value, the following transactions relating to and affecting the title or possession of the land so purchased by him, as heretofore stated, to-wit: 1" On August 23, 1901, he sold and conveyed by deed for the price of $800.00 in cash, to James L. Bradford, of New Orleans, La., all of the lands embraced within his homestead entry, describing the same as the East half of the North West quarter, the North East

quarter of the South West quarter, and Lot 2, of Section 33, T. 10 S. R., 3 E., in the Parish for Ascension, containing 157.77 acres, which said deed was recorded in the proper office in Ascension Parish, September 5, 1901.

2″ On August 24, 1901, the said James L. Bradford, by deed, granted to this defendant the right or option to purchase and buy from him at any time before the 1st of January, 1905, one half of the land conveyed to him the previous day, and being the South East quarter of the North West quarter, and the North East quarter of the South West quarter of Section 33, containing 79.83 acres, and being the portion of this defendant's homestead entry on which were situated his residence, fields, orchards and principal improvements: it being stipulated in said deed that this defendant should pay for said land to the said Bradford, the sum of Seven hundred and fifty dollars as follows: $230.00 on the first of January, 1903, $250.00 on the first of January, 1904, and $270.00 on the first of January, 1905. And it was further stipulated in said deed that if this defendant made default on either of the *two first* payments, that his right or option to buy back said land should be forfeited without notice or putting in default; which said deed of said Bradford was likewise recorded in the proper office in Ascension
13 Parish also on the 5th of September, 1901; and for each of which several sums, this defendant made and delivered, at the time, to-wit: the 24th of August, 1901, his three promissory notes for said sums respectively, due as above stated, to the order of said J. L. Bradford each to bear interest at the rate of eight per cent per annum from maturity until paid.

3″ On July 25, 1903, said James L. Bradford, by deed of that date, extended the terms of payment and the option to buy back the aforesaid land, until the first of January, 1904, on condition that this defendant should then make payment in full, with interest up to that time, of the sums specified heretofore as contained in the original option of 24 August, 1901:

4″ On December 23, 1903, this defendant paid to the said J. L. Bradford the sum of Two hundred dollars, on his note, of August 24, 1901, which had fallen due on January 1, 1903, and remained unpaid, in principal and interest; but it was afterwards stipulated and agreed between this defendant and the said Bradford that said payment of $200.00 should not be imputed as a payment on the note of $230.00 falling due January 1, 1903, but should be imputed to and go as payment of the debt due to said Bradford by Zachary W. Causey, for borrowed money, which debt was secured by a mortgage on the land of the said Z. W. Causey, which mortgage this defendant was interest*ing* in raising.

5″ On December 24, 1903, James L. Bradford, in consideration of the foregoing payment of Two hundred dollars made by this defendant on the preceding day, gave this defendant his written agreement of that date, extending the aforedescribed option to the 1st day of January, 1905.

6″ On November 3, 1905, this defendant entered into a written contract with C. S. McFarland, by which he leased to the said McFarland, for the term of three years, commencing January 1, 1906,

and ending December 31, 1908, the South East quarter of
14 the North West quarter and the North East quarter of the South West quarter of Section 33 T. 10 S. R. 3 E., with the buildings and improvements thereon, the rent for the first year, 1906, being $480.00, paid in advance, and the rent for the second year, 1907, to be $480.00 payable on the 1st of January, 1908, and the rent for the third year, 1908, to be payable on 31st December, 1908, and being for $480.00; in which contract of lease it was covenanted that at any time during its continuance, the lessee, McFarland, might have the privilege of buying the leased property for the price of Twenty eight hundred dollars, all rents to cease at the date he should avail himself of said option, and that all rents previously paid by him, or then due, should go to the credit of such lessee in making the purchase. It was further stipulated that should the lessee buy the land at the end of the year 1906, instead of paying Twenty eight hundred dollars, he should pay that sum, less, $240.00, being one half of the rent paid in advance for that year, and that should said lessee buy at any time after the year 1906, then he should pay $2,800.00, less one half of all rents then due; and under said contract of lease, this defendant at once gave possession to said lessee, who at once entered upon the property, with his laborers and agents, and is still cultivating and in possession thereof, and this defendant has moved with his family to the Parish of Livingston where he now resides.

7″ On December 7, 1905, this defendant executed a mortgage in favor of James L. Bradford, on the above land, leased, as aforesaid to said McFarland, and being the South East quarter of the North West quarter and the North East quarter of the South West quarter, to secure the payment, in principal and interest, of a note executed on that day in favor of the said Bradford, for the sum of Four hundred dollars, being money borrowed that day from said Bradford, with interest at the rate of eight per cent per annum from date until
paid; in which mortgage it was stipulated that when this de-
15 fendant should exercise his right of option to buy back said property from said Bradford, he would pay, in addition to the sum of $750.00, the further sum of $400.00, with all interest up to January 1, 1909; and in accepting said mortgage the said Bradford extended the option of this defendant, and his right to buy back the said land, until the first of January, 1909. And this defendant did also, on said 7th December, 1905, as further security for the payment of the $400.00, assign and transfer to the said Bradford the rents that might be due or become due from the said C. S. McFarland under the lease above set forth, made November 3, 1905; the said mortgage of December 7, 1905, and extention of same to the first of January, 1909, being duly recorded in the Parish of Ascension, at Donaldsonville, in Book of Mortgages No. 29, page 213, also in Book of Conveyances No. 47, page 419.

As to the matters and things set forth and charged in said Bill in,

Paragraph Fourth.

This defendant doth admit that in support of his application for a homestead entry he did depose to the facts stated in paragraph fourth of the Bill, but he denies that any of said statements were false or fraudulent in any respect whatsoever; and denies that they were well known at the time they were made to be so by this defendant, or by William H. Wright, or by James L. Bradford, or by anybody else. He denies that James L. Bradford acted for him in the land office as his attorney, but admits that William H. Wright so acted. He denies that his homestead entry was made for the benefit of William H. Wright and James L. Bradford, or either of them, or for any other person or persons, corporation or syndicate, whatsoever, and denies that said entry was made for the purposes and with the understandings set forth in said Bill of Complaint. But this defendant avers that his said entry was made solely for his own exclusive use and benefit to secure a home for himself and family, and that in March 1898, he settled upon the land,
16 being before he made his entry, and began the improvement thereof, and has ever since, until he leased part thereof to C. S. McFarland, resided upon the same, with his family, as his sole and only home, and has made extensive and expensive improvement upon the same, building houses, stabling, tenants' houses, fencing and ditching, planting of orchards, gardens, and other usual improvements on a farm, making the same of such great value that he has been able to sell it, mortgage it, and lease it, as aforesaid, to great advantage to himself and his family, and that ever since he made his said entry he has paid the State and Parish taxes on said lands, or caused the same to be paid.

As to the matters and things set forth and charged in said Bill in

Paragraph Fifth.

This defendant says that as to the charge that William H. Wright and James L. Bradford were engaged, at the time he made his said homestead entry, in a scheme to deprive the United States of the title and possession of lands in the Parish of Ascension, this defendant has no knowledge, and therefore he denies the same; but that the charge that said persons, or either of them, persuaded this defendant to make his homestead entry, with the understanding that this defendant would, on receiving a patent or patents for his land, transfer to said parties, or either of them, one half, or all of the land so patented, or any portion of the same, with right to redeem said land, or any portion thereof, is entirely false and erroneous. He denies that the expenses and costs attending the making of his said entry, and the perfecting of the same were to be paid by the said James L. Bradford and the said William H. Wright, without cost to this defendant; and he denies that the services of the said Bradford and said Wright, or either of them, in connection with this defendant's homestead entry, were to be rendered without

cost to this defendant. He admits that said James L. Brad-
17 ford was at that time an attorney at law engaged in practicing before the land office at New Orleans, or he has always so understood such to be the fact, and therefore admits the same; and admits that said William H. Wright was, or was supposed to be, the Clerk of said James L. Bradford; but has no knowledge that he was the confidential agent of said Bradford, and he therefore denies the same. He admits that the said William H. Wright was his attorney before the land office and the federal land authorities in conducting the contest for this defendant for some years prior to his entry, against a former homestead entry of the same land made by one John J. Roberts, which he did successfully, and for all of his services in that connection, and in procuring and aiding this defendant to procure finally, the homestead entry which he made on March 19, 1900, and to reimburse him all of his expenses and outlays, as well as his services in and about the matter of cancelling the one and securing and perfecting the other, this defendant did agree to pay said William H. Wright the sum of Two hundred dollars in money, and which sum he has heretofore paid and discharged.

This defendant further admits that on or about the third day of July, 1901, he made final commutation proof for the purpose of obtaining a patent for his land, but denies that any part of said final proof was false and fraudulent in any respect, or was so known to be false and fraudulent, by himself, or by the said Bradford, or by the said Wright. He denies that either of his two witnesses who assisted him in the making of his final proof, to-wit, Joseph D. Lodwick and John C. Harris, took positive oath that this defendant had not mortgaged, sold or contracted to sell any portion of his homestead, each one testifying that he had no knowledge on the subject. He denies that he had agreed, as charged, that he would convey all or a portion of his said land to James L. Bradford and William H. Wright, or either of them, in accordance with any agreement and understanding aforesaid, or at all.

As to the matters and things set forth and charged in said
18 Bill in

Paragraph Sixth.

This defendant denies that *his* homestead entry was made pursuant to any illegal, corrupt and fraudulent agreement with anybody. He denies that the same is null and void and that the patent issued thereon was fraudulently and illegally obtained, to the knowledge of this defendant, William H. Wright, James L. Bradford, or either of them.

He denies that this defendant failed to comply with the homestead laws of the United States in perfecting his homestead entry. He denies that said entry was made and perfected in violation of law, and that the patent issued to this defendant should be cancelled and annulled, and denies that the transfers made by this defendant to James L. Bradford should be cancelled, annulled and set aside,

and denies that the said lands should be decreed to be the property of the United States. He denies that the acts and doings and alleged pretenses of this defendant, William H. Wright and James L. Bradford are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of the United States.

In conclusion, this defendant denies that the complainant in said Bill of Complaint has ever re-paid, or offered to re-pay, to him the sum of $13.95 paid to complainant by this defendant when he made his said homestead entry, March 19, 1900, as part of the price of the land then entered by him, and he denies that the complainant has ever refunded or offered to refund and return to him in negotiable form, or in any other form or manner whatsoever, the certificates of location described in said Bill of Complaint as certificates Y, 12 and Y, 13, admitted to have been given by this defendant and received by the complainant as the price of the land purchased by this defendant when he made commutation proof and was permitted to make cash entry of the land covered by
19 his original homestead.

Wherefore, this defendant, having fully answered, confessed, traversed and avoided, or denied, all the matters in the said Bill of Complaint, material or necessary to be answered, according to his best knowledge and belief, humbly prays this Honorable Court to enter its decree that this defendant be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained. And for such further and other relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

(Signed) POWHATAN E. CAUSEY,
By J. L. BRADFORD, *Counsel.*

Replication to Answer of Powhatan E. Causey.

Filed June 8, 1906.

U. S. Circuit Court, Eastern District of Louisiana, at New Orleans.
In Equity.

No. 13257.

UNITED STATES
vs.
JAMES L. BRADFORD, POWHATTAN E. CAUSEY, et al.

The Replication of the Above-named Complainant to the Answer of the Above-named defendant, Powhattan E. Causey.

This replicant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendant, for replication thereto sayeth that it does and will ever

maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained
20 material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct, and humbly — as in and by its said bill it has already prayed.

(Signed) W. W. HOWE, *U. S. Att'y.*

Order Appointing Special Master.

Filed November 10, 1906.

U. S. Circuit Court, Eastern District of Louisiana. In Equity.

No. 13257.

UNITED STATES
vs.
JAMES L. BRADFORD et als.

The attention of the Court having been called to the fact that this equity cause is at issue and ready for the taking of evidence,

The Court of its own motion appoints Victor Leovy, Special Master in this cause and he is hereby authorized and directed to hear and take the testimony and evidence, and to make report of the same together with his findings of fact and conclusions of law, to the Court.

New Orleans, La., November 10th, 1906.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Consent.

Filed October 18, 1907.

United States Circuit Court, Eastern District of Louisiana.

No. 13257. In Equity.

UNITED STATES
vs.
JAMES L. BRADFORD et als.

21 Consent.

The undersigned, for good and sufficient consideration, withdraws his defenses herein filed, and consents that a Decree be now entered, cancelling the Patent described in the Bill of Complaint

and the conveyance also described in said Bill from Powhattan E. Causey to James L. Bradford, as to all interests of James L. Bradford therein, but without prejudice to the rights of said Powhattan E. Causey or any third person in good faith, and declaring the following described land, to-wit:

The Southeast Quarter of the Southwest Quarter, or lot No. 1 of Section 33 Township 10, South, Range 3 East, Southeastern District East of River, containing 38.02 Acres, New Orleans, La., Land District, to be the property of the United States, the complainant herein, and that the defendant, James L. Bradford pay the costs to be taxed. This defendant reserves any right he may have to claim for his improvements on the lands, Taxes &c., under the laws of the State of Louisiana.

(Signed) J. L. BRADFORD.
Oct. 16th, 1907.

Decree.

Entered and Filed October 18, 1907.

U. S. Circuit Court, Eastern District of Louisiana.

No. 13257. In Equity.

UNITED STATES
vs.
JAMES L. BRADFORD et als.

Decree.

This cause came on to be heard on this the Bill of Complaint and other proceedings in the cause and on the written consent filed in the record by James L. Bradford, for himself, and was argued by counsel.

In consideration whereof, it is now ordered, adjudged and decreed that the certain Patent issued by the United States on
22 the 28th of February, 1902, to Powhattan E. Causey, for the following described lands, to-wit: The East Half of Northwest Quarter, Northeast Quarter of the Southwest Quarter, and lot 2 Section 33, Township 10, South, Range 3 East, Southeastern District East of River, New Orleans, La., Land District, be and the same is hereby avoided, cancelled and annulled as to all interest of James L. Bradford therein, but without prejudice of the rights of said Powhattan E. Causey, or any third person in good faith, and that the certain conveyance of said land from Powhattan E. Causey to James L. Bradford, made on August 23rd, 1901, recorded in the Parish of Ascension, in Conveyance Book No. 42, folio 334 et seq., be and the same is hereby avoided, cancelled and annulled, as to the following described lands, to-wit:—The Southeast Quarter of the Southwest Quarter, or lot No. 1 of Section 33 Township 10 South Range 3, East, Southeastern District East of River, New

Orleans, La., Land District, containing 38.02 Acres, and that said lands, lastly above described, are and the same are hereby declared to be the property of the United States. The claim of the defendant for improvements on said lands if any he has under the Laws of Louisiana is reserved.

It is further ordered, adjudged and decreed that the defendant, James L. Bradford, pay the costs of this suit to this date to be taxed; and that the Bill herein be retained for such other and further orders as may be just.

Thus done and signed in open court this 18th day of October, A. D. 1907.

(Signed) EUGENE D. SAUNDERS, *Judge.*

Motion and Order Amending Decree.

Filed March 14, 1910.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

No. 13257. In Equity.

UNITED STATES
versus
JAMES L. BRADFORD et als.

23 On motion of W. J. Waguespack, Assistant United States Attorney, and on showing to the court that on October 18, 1907, a decree was rendered in the above numbered and entitled cause cancelling a certain patent and conveyance, and that in said decree, an error was made in the description of the land surrendered by James L. Bradford to the United States, and that the said error is only a clerical error in this, that said description reads:

"The Southeast Quarter of the Southwest Quarter, or Lot No. 1 of Section 33 Township 10 South Range 3, East Southeastern District East of River, New Orleans, La., Land District, containing 38.02 acres."

Whereas the correct description of the land is as follows, to-wit:

"The Southeast Quarter of the Southwest Quarter, or Lot No. 2 of Section 33 Township 10 South Range 3, East, Southeastern District East of River, New Orleans, La., Land District, containing 38.02 acres."

And on further showing to the court, that the said error which is merely a clerical error and can be corrected by amending the decree so that the description shall read Lot No. 2 instead of Lot No. 1,

It is ordered that the said decree rendered as aforesaid on October 18, 1907, in the above numbered and entitled cause be amended so that the description of said land surrendered as aforesaid by the said James L. Bradford, read as follows, to-wit:

"The Southeast Quarter of the Southwest Quarter, or Lot No. 2 of Section 33 Township 10 South Range 3, East, Southeastern District East of River, New Orleans, La., Land District, containing 38.02 acres."

(Signed) ALECK BOARMAN, *Judge.*
March 14/1910.

Master's Report.

Filed March 18, 1911.

United States Circuit Court, Eastern District of Louisiana.

No. 13257.

UNITED STATES OF AMERICA
vs.
J. L. BRADFORD, W. H. WRIGHT, and POWHATTAN E. CAUSEY.

NEW ORLEANS, March 18, 1911.

24 I hereby certify that on March 11, 1911, I served copy of the attached report in the above-entitled cause on W. J. Waguespack, Esq., counsel for complainant, and T. M. Miller, Esq., counsel for defendants; informing each of said counsel in writing on said date that the same was draft of my report as Special Master in said cause, and that my report would be filed on Friday, March 17th, 1911; and that it would be necessary for such counsel to file with me before that time any exception he might wish to make. I further certify that no exception has been filed or offered to be filed; and I now sign and file said report.

(Signed) VICTOR LEOVY,
Special Master.

United States Circuit Court, Eastern District of Louisiana.

No. 13257.

UNITED STATES OF AMERICA
vs.
J. L. BRADFORD, W. H. WRIGHT, and POWHATTAN E. CAUSEY.

Report of Victor Leovy, Special Master.

I. Order of Reference.

In this cause an order was entered on November 10th, 1906, appointing me Special Master and authorizing and directing me to hear and take testimony and evidence, and to make report of the same, with my findings of fact and conclusions of law.

II. Pleadings.

The pleadings are, of course, matters of record and no report by me as to them is necessary, but in order to make clear what is said hereinafter as to evidence and findings of fact, I mention that in various causes, brought by the United States against William H. Wright and James L. Bradford and various other defendants (including No. 13253 wherein Z. W. Causey is a defendant, 13255 wherein Mattie L. Webb is a defendant and 13257 wherein
25 P. E. Causey is a defendant) it was charged in substance, in bills substantially identical that Bradford and Wright, his clerk, had entered into a scheme to obtain lands in Ascension Parish, whereby various persons (including Z. W. Causey, Mattie L. Webb and P. E. Causey) were to obtain lands under the homestead laws at the expense of Bradford and Wright and to transfer to Bradford and Wright parts of said lands; and it is alleged that their agreements were carried out, and the United States now seeks the annulment of the patents and of transfers made to Bradford by the patentees. In each case Wright filed a disclaimer, and in each case, after demurrers overruled and answers filed, Bradford consented, so far as his interests were concerned, to the relief asked by the United States. This surrender by him is not mentioned and was not considered by me as evidence, but is mentioned and was considered merely to show the situation as of record.

In this Report by me in this cause mention is made by me of two other causes simply because it is inevitable on account of the method of taking evidence hereinafter mentioned.

III. Evidence and Exhibits.

In the cause No. 13255 (being that wherein Mattie L. Webb is one of the defendants) testimony was taken at Donaldsonville in May, 1907; at New Orleans in January, 1907; and at New Orleans in February, 1907; and agreements were made as shown by the reports of said testimony that it should be considered as taken in various other cases, including No. 13257, wherein Powhatan E. Causey is one of the defendants, and No. 13253, wherein Zachary W. Causey is one of the defendants. It was agreed that carbon copies of this testimony should be furnished, so that it might be returned in each case, and such copies have been so furnished, with the exception that the testimony of Powhatan E. Causey appears in only one transcript; and no duplicates or copies of exhibits have been furnished. I am accordingly returning and reporting to the Court in suit No. 13255 the only complete transcript and all the exhibits; and report and return in each of the other two cases above mentioned a transcript which is complete except for the testimony of Powhatan
E. Causey and the exhibits, and I make the testimony of
26 Powhatan E. Causey and the exhibits by reference part of the return in each case. It is desired by all parties that a speedy report be made; and I assume that they will be able to complete the

record in each case by producing certified copies of the evidence of Powhatan E. Causey and of the exhibits.

I accordingly return in suit No. 13255, complete transcripts marked respectively 13255, Donaldsonville; 13255, New Orleans, 1 and 2; and all the exhibits described therein; and I return in suits 13253 and 13257 similar transcripts similarly marked lacking the testimony of P. E. Causey; and I return and report in 13253 and 13257, by reference, the testimony of P. E. Causey, and the said exhibits, returned in No. 13255.

All defendants were represented by counsel in each case, which counsel offered at each hearing and examined and cross-examined witnesses without objections as to notice. The notices given are therefore not reported. At the conclusion of the testimony above mentioned counsel for all parties agreed that they had no further testimony to offer, and the cause was accordingly, argued and submitted.

IV. Findings of Fact.

(1.)

I find as a fact that the allegations of the bill as amended, as contained in Sections First, Second and Third thereof are true and have been proven, and I adopt the same as my findings of fact herein.

(2.)

I find as a fact that in support of his application for homestead Powhatan E. Causey made the affidavit of which copy is returned among the exhibits herein; and I find that said declaration was false and fraudulent in that said Powhatan E. Causey had at that time agreed to transfer to William H. Wright one-half of the
27 land applied for when the same should be patented to him; and I find to that extent said homestead entry was made by said Powhatan E. Causey for the benefit of said Wright; and I also find that in making said agreement said Wright was acting for James L. Bradford under a general understanding with said Bradford that said Bradford would furnish assistance in carrying out such agreements and that the transfers should be made by said Bradford; and that said agreement with Powhatan E. Causey was in pursuance of the scheme hereinafter set out.

(3.)

I find as a fact that at and about the time said application was made said Bradford and Wright were engaged in the prosecution of a scheme to deprive the United States of the title and possession of certain lands in the Parish of Ascension; and that in execution of said scheme, the said Wright agreed with the said Powhatan E. Causey to make said homestead entry with the understanding that upon perfecting the said entry and receiving a patent therefor would transfer and convey to the said William H. Wright one-half of the

lands so patented in compensation for expenses, costs and services to be furnished and rendered by said Wright; and I find that said Wright, to the knowledge of said Bradford, acted for the said Bradford in making such agreement with the understanding that the said Wright would procure the making of the transfer to said Bradford or himself for the benefit of both of them, said Bradford to assist in furnishing funds and scrip and services or some of these considerations.

(4.)

I find that on July 3, 1901, said Powhatan E. Causey made final proof with affidavits of witnesses as shown by exhibits filed; and that said final proof was false and fraudulent as being made in pursuance of the agreement hereinabove stated, and said Powhatan E. Causey and said Wright and said Bradford knew at that time all the facts hereinabove stated.

V. Conclusions of Law.

I adopt as conclusions of law Article Sixth of said Bill.

28 VI. Reasons.

As to the facts, the testimony has been only lately concluded and counsel for both parties desire a speedy report. This would preclude a detailed analysis of the testimony; but in my view no such analysis is necessary.

The reason that I consider that no full analysis is necessary is that the main facts seem to me to be proved by abundance of testimony and the evidence as to the connection of each defendant is capable of very brief discussion. The complainant proved beyond dispute the homestead entries and patenting and the making of various deeds thereafter by the patentees to Mr. Bradford for fictitious cash considerations. It was also shown that the making and perfecting of the homestead entries were preceded by dealings between Mr. Wright (Mr. Bradford's clerk) and the person making the entries, and that funds and scrip and services were furnished by Mr. Bradford and Mr. Wright. It would seem reasonable, therefore, to infer (even apart from the direct testimony) that the transactions as carried out were the transactions that had been agreed upon.

The theory of the defense is that the money, scrip and services were furnished upon credit, and the debts thereby created were paid by land transfers under agreements made subsequent to the patenting. Mr. Wright testifies substantially to this effect; but the record contains no written agreements supporting this theory and his testimony is barren of the details that would naturally accompany loans and credits, such as inquiry into financial standing, pressure for payment, requests for extensions, etc.; and there is little, if anything, as to any discussion as to fixing of prices, or as to details, times or circumstances of the alleged subsequent agreements to pay the debts

with land. On the other hand, the record does contain no less than three samples of original agreements to transfer, which are admittedly in Mr. Wright's handwriting and are proven to have been tendered for signature to various persons. His testimony that he drew them as experiments retained them by oversight, and does not
29 know how they passed out of his possession, is inherently incredible and contradicted by much direct testimony. It may be added that lending money and selling scrip on credit to impecunious persons would not seem to offer sufficient advantages to have induced the industry and activity displayed by Mr. Wright herein or the furnishing of funds and scrip by Mr. Bradford.

Under these circumstances, not much direct testimony is needed to show that any one of the persons making transfers to Mr. Bradford for fictitious considerations, after having received scrip and advances, had agreed in advance to do so. This direct testimony is supplied in the case of Mattie L. Webb by E. W. Floyd, a wholly unimpeached witness, who testifies directly and positively to her plain admission. There was nothing in her appearance and manner of testifying to discredit her testimony; but it seems to me to be very vague as to her original agreement and I see no reason for accepting it as against the positive statement of a disinterested and unimpeached witness. As to Powhatan E. Causey, a number of witnesses testify to direct admissions by him (pp. 175, 71 and 10); and considering his own incredible testimony and all the circumstances above stated, I think their testimony is clearly to be preferred to his.

As to Zachary W. Causey, however, while it seems highly probable that he also made the agreement charged, I do not find that it is proven that he did so; as the only direct testimony is to the contrary.

As to the law, it seems to me that my findings substantially sustain the bills, and that as general demurrers have been overruled, the law has already been decided by the Court.

The orders of reference do not authorize me to make recommendations as to relief to be given or the decrees to be entered.

Respectfully submitted,

(Signed) VICTOR LEOVY,
Special Master.

30 *Exceptions of Powhattan E. Causey to Report of Special Master.*

Filed April 12, 1911.

In the Circuit Court of the United States for the Eastern District of Louisiana.

In Equity. #13257.

UNITED STATES
vs.
J. L. BRADFORD, WILLIAM H. WRIGHT, and P. E. CAUSEY.

Exceptions to Master's Report.

And now into Court comes Powhatan E. Causey, defendant in the above entitled cause, and excepts to the finding and report herein filed by Victor Leovy, Esq., Special Master, to whom this cause was referred, and states the following grounds of exception to said report to-wit:

I.

Said Special Master has erred in ignoring his own direct and positive testimony that he was innocent of fraud or collusion in respect to his said entry; That he had no agreement whatever with said Wright and Bradford or either of them prior to the making of his original entry, or the making and submission of his final proof and the commutation of his homestead entry, whereby they, or either of them, were to have any part of said land so entered by him.

II.

Said Special Master, in his said report, fails to find, nor was there any evidence to warrant the finding, that the contract or agreement as alleged in the bill of complaint herein, was entered into by
31 this exceptor, that is to say, an agreement and understanding with William H. Wright and James L. Bradford.

III.

The said Special Master acted upon a suspicion of his own and against the clear and satisfactory evidence placed before him, in finding as a fact that the sworn declaration made by this exceptor in support of his application for a homestead entry was false and fraudulent, and that he had agreed to transfer to William H. Wright one-half of the land applied for when the same should be patented to him, and that to that extent said homestead entry was made for the benefit of said Wright; and he maintains, upon the evidence submitted to said special master, his finding should have been that said

entry was made without any understanding or agreement whatsoever with said Wright or any other person.

IV.

In finding that exceptor had, before entry, made said agreement with said Wright, said Master found against this exceptor's original application and affidavit, and also his final proof, in the first of which this exceptor had solemnly sworn that he had made no such agreement and would make none; and in the second of which his witnesses failed to testify that he had made such an agreement, and he, himself, testified positively that he had not. And in also in respecting the testimony of three confessed perjurers, Robert H. Cox, Joseph D. Lodwick, and Louis H. Maisenbacher; which should have been rejected as that of admitted perjurers.

V.

Said Special Master found the supposed facts reported by him against this exceptor, and each of them, against the clear preponderance of the evidence, and ignored the principle that the burden of proof was upon the complainant in the bill in equity to annul a United States land patent issued on a homestead entry.

32

VI.

Said Special Master had assumed to find and report a contract other than the supposed contract alleged in the supposed bill of complaint herein, in this:—That, whereas, the so-called bill of complaint alleges in substance that prior to his homestead entry, and at and before the time of his final proof, this exceptor had made an agreement to convey a part of his land to William H. Wright and James L. Bradford, said Special Master has assumed to find an agreement with said Wright alone, and that said Wright was acting for James L. Bradford.

VII.

The said Special Master not only erred in finding as a fact that this exceptor had agreed to transfer one-half of the land applied for to William H. Wright, but also erred in finding as a fact that in making said supposed agreement said Wright was acting for James L. Bradford under a general understanding with said Bradford that the latter would furnish assistance in carrying out such supposed agreement, and that the supposed transfer should be made to the said Bradford; and this exceptor maintains that the only reliable testimony in this cause shows clearly and conclusively that this exceptor entered said land for and in his own behalf solely, and that he only conveyed a portion thereof after he had a right to convey, and then, in order to pay a bona fide indebtedness incurred long after he made

his entry, and after he made his final proof and received his final receipt.

VIII.

The said Special Master was not warranted by the evidence in the cause in finding that any agreement or scheme existed between J. L. Bradford and William H. Wright to deprive the United States of the land here in controversy, or any other land, and the statement in his report that James L. Bradford voluntarily surrendered his interest in the land, mentioned in the Bill of Complaint against this exceptor is, so far as this exceptor is concerned, purely gratuitous, and can have no other effect than to cast suspicion upon this exceptor, because of the fact, admitted in his answer, that he had, after his final
33 proof was accepted by the government, and his final certificate issued to him, conveyed to the said Bradford the portion of the land so surrendered by him to the government; said Master was fully apprised of the conditions and circumstances under which said Bradford made such surrender, yet he did not see fit to state the same. But there was no proof whatever in this, or any other suit, which would have warranted a decree for the cancellation of the conveyance so made by this exceptor to said Bradford.

IX.

Under paragraph 4 of said report, it is alleged under the first head of said paragraph, that the allegations of the bill as amended contained in Sections First, Second and Third thereof are true, and have been proven, and are adopted by the said Master as facts found by him; and this exceptor says that if the Maste[illegible]erred to those sections in any amended bill filed against this exce[illegible]. then in point of fact, no such amended bill was filed, and the re[illegible]d fails to show that there was; and if he referred to such sections in the only bill that was filed against this exceptor, to-wit: bill #13257 filed July 26, 1904, then this exceptor says that such allegations were admitted by him in his answer filed June 4, 1906, and were therefore not in issue, and the only effect of introducing such matter into his report in this cause is to give plausibility and force to his other findings, and to increase costs, and to cloud the real issues. And in respect to the several findings of fact by said Special Master in paragraph 2 of Division 4, entitled "Findings Of Fact", to the effect that the affidavit taken by this exceptor when he made his homestead entry, which said entry was made March 19, 1900, was false and fraudulent, this exceptor maintains that they, each and all of them, rest wholly upon the testimony of three confessed perjurers, to-wit: R. H. Cox, J. D. Lodwick and Louis H. Maisenbacher, and that in making said finding, said Master ignored all the clear, conclusive and satisfactory evidence in the case, and particularly that of P. E. Causey,
34 himself, of William H. Wright, J. L. Bradford, and others. And he submits in conclusion, that said report is not in any finding of fact therein stated, supported by the class and quantity of evidence that should be, and is, required to annul a United States Patent issued on homestead entries.

X.

He further excepts to the conclusions of law reported by the Special Master for the reasons:

(*a*) That no such contract, agreement or understanding as charged in the bill, to-wit: a contract or agreement made by this exceptor with William H. Wright and James L. Bradford, was found to exist or ever to have existed.

(*b*) Because, the evidence not justifying the findings of fact so reported, the conclusion is erroneous.

XI.

The said Special Master should have found that this exceptor made his original entry and final proof for and on his own behalf; that his application and all his affidavits, and those of his witnesses on final proof, respecting said entry were true, and that he had made no agreement with said Wright and Bradford, or either of them, to convey any part of said land, and should have found on the testimony as a matter of law, that the allegations of said bill were not supported.

XII.

He further excepts to said report for the reason that the Special Master has made only a partial return of the testimony taken before him, and has omitted all that taken before him on behalf of the defendant in 1907, at Donaldsonville, being the testimony of six witnesses for defendant.

Wherefore, this exceptor respectfully prays that his foregoing exceptions be maintained; that said Report of said Special Master, both in respect to all and singular his findings of fact and of law, be set aside and held for naught, and that this Honorable Court may
35 be pleased upon final hearing upon the pleadings and proof taken before said Special Master, to order, adjudge and decree that said bill of complaint be dismissed.

(Signed) T. M. & J. D. MILLER,
Solicitors for Exceptor.

Hearing on Exceptions to Master's Report and Submission.

Extract from the Minutes.

February Term, 1912.

NEW ORLEANS, THURSDAY, April 18th, 1912.

Court met pursuant to adjournment.
Present: Hon. W. I. Grubb.

No. 13257.

(Late Circuit Court.)

UNITED STATES
vs.
JAMES L. BRADFORD et als.

This cause came on this day to be heard upon the exceptions, filed April 12th, 1911, on behalf of Powhatan E. Causey, one of the defendants to the report of Victor Leovy, Esquire, Special Master, herein filed on March 18th, 1911; and also for final hearing upon the pleadings, proofs, evidence and testimony in this cause;

Present: T. M. & J. D. Miller, Solicitors for Exceptor and Defendant.
" Louis H. Burns, Assistant U. S. Attorney, for the Complainant.

Whereupon, Counsel for the complainant objected to the filing of the exceptions to the Master's Report in this cause upon the ground that said exceptions should have been presented to the Master before the said Master's Report was filed, and after hearing counsel
36 for the respective parties, the Court overruled the objections of the Complainant;

And thereupon, the cause was argued by counsel for the respective parties and submitted—when the Court took time to consider.

Decree.

Filed April 26th, 1912.

United States District Court, Eastern District of Louisiana, New Orleans Division. In Equity.

No. 13257.

UNITED STATES
vs.
POWHATAN E. CAUSEY, WILLIAM H. WRIGHT, and JAMES L. BRADFORD.

Decree.

This cause came on to be heard on the 18th day of April, 1912, on the Bill of Complaint, exceptions of Powhatan E. Causey to the report

of the Special Master, and other proceedings in the case, and was argued by counsel.

In consideration whereof, it is now ordered, adjudged and decreed that the two certain patents issued by the United States, on the 28th day of February, 1902, to Powhatan E. Causey, for the following described lands, to-wit:

The East half of the Northwest quarter of Section thirty-three in Township Ten, South of Range Three East of St. Helena meridian, Southeastern District East of River, in Louisiana, containing seventy-nine acres and eighty-three hundredths of an acre; and

The Northeast quarter of the Southwest quarter, and the Lot numbered Two of Section thirty-three, in Township Ten, South of Range Three East of St. Helena meridian, Southeastern District East of River, in Louisiana, containing seventy-seven acres and ninety-four hundredths of an acre.

be cancelled and annulled.

It is further ordered, adjudged and decreed that the said lands, as hereinabove described, be, and the same are hereby declared to be, the property of the United States of America.

37 It is further ordered, adjudged and decreed that the said Powhatan E. Causey pay the costs of this suit, incurred and to be taxed since the 18th day of October, 1907.

Thus done and signed in open court, this 26th day of April, A. D. 1912.

(Signed) W. I. GRUBB, *Judge.*

Agreement as to Testimony.

Filed July 17, 1912.

In the District Court, Formerly the Circuit Court, of the United States for the Eastern District of Louisiana, New Orleans Division.

No. 13257.

THE UNITED STATES
vs.
P. E. CAUSEY et al.

No. 13255.

THE UNITED STATES
vs.
MATTIE L. WEBB (NOW KIEFER) et al.

Whereas the testimony taken before the Special Master was the same in both of said causes, so that only one copy was filed for use in both, it is agreed that on appeal by either of the above named defendants, the testimony sent up to the Circuit Court of Appeals may be referred to and used in the other if the Defendant- in such

other case shall appeal. This agreement is subject to such modification as the Court of Appeals may require. And in case the testimony shall be printed, the same shall be printed in each case.

38 N. O., July 17/12.

(Signed) T. M. MILLER,
Att'y for Defendants.

(Signed) L. H. BURNS,
Ass't U. S. Att'y, for Complainant.

Petition for Appeal.

Filed July 20, 1912.

In the District Court, Late the Circuit Court, of the United States for the Eastern District of Louisiana.

No. 13257.

THE UNITED STATES OF AMERICA
vs.
POWHATAN E. CAUSEY et al.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

The petition of Powhatan E. Causey, one of the defendants in the above numbered and entitled cause, being a citizen of the United States of America and of the State of Louisiana, with respect shows unto your Honors, that he is aggrieved by a certain final decree rendered against him in the above entitled cause, signed and entered on the 26th day of April, 1912, as well as by a former decree in said Court, overruling his demurrer to the bill of complaint therein, and that he desires to prosecute an appeal therefrom to the United States Circuit Court of Appeals for the Fifth Circuit;

Petitioner further shows unto your Honors that, by reason of his poverty, he is unable to pay the costs of said suit, to pay the fees for making up a transcript of the record, to pay for printing the

39 same or to pay the costs of such appeal or give security in the premises, all as set forth in his affidavit herewith, which said affidavit has been duly filed in said cause in said District Court for the space of 3 days, and that his Honor, the presiding judge thereof, has been duly notified in the premises, and that said District Court has not filed any certificate or statement that, in its opinion, said appeal is not prosecuted in good faith.

Petitioner further shows that, in and by his said affidavit, he has set forth the grounds for the redress he seeks by his said appeal and refers to his said affidavit in the said premises; that he is advised that he is entitled under the Act of Congress of June 25th, 1910, to prosecute his appeal from said decree to said Circuit Court of Appeals, without being required to pay any fees for the transcript or for printing the record or to give security for his said appeal.

Petitioner further shows that the said suit was finally disposed of as to his co-defendants, by previous orders and decrees, from which no appeal has been nor will be taken, the same having been consented to.

The premises considered and the said affidavit, your petitioner respectfully prays that an appeal be granted from said final decree, as well as from said decree overruling his said demurrer, to the said United States Circuit Court of Appeals without requiring any bond or other security from him in the premises: without requiring him to pay the fees for making up a transcript of the record or for printing the same, and that your Honors may be pleased to direct the Clerk of said District Court of the United States for the Eastern District of Louisiana to send up to said Circuit Court of Appeals a transcript, duly certified, of the pleadings, proceedings and decrees rendered in said cause, as well as the Master's report therein, and of the testimony, if your Honor- shall so determine, directing him to send up to said Circuit Court of Appeals the original testimony taken in said cause, as well as the pleadings, the Master's report
40 therein, and certify to said Circuit Court of Appeals the transcript of the orders and decrees made in said cause, and that his said appeal be heard in said Circuit Court of Appeals, without requiring him to cause to be printed or to pay for printing of the records therein. And petitioner files herewith his assignment of errors to the said decrees of said District Court, late the Circuit Court, of the United States for the Eastern District of Louisiana;

And he prays for all further and appropriate orders in the premises.

(Signed) P. E. CAUSEY,
By T. M. MILLER,
His Solicitor & Counsel.

Order on Petition for Appeal.

Filed July 25, 1912.

Order.

The foregoing petition and affidavit filed therewith considered, It is ordered that an appeal be, and the same is, hereby granted to the said Powhatan E. Causey to the Circuit Court of Appeals for the Fifth Circuit, at New Orleans, Louisiana, from a final decree of the District Court, late the Circuit Court, of the United States for the Eastern District of Louisiana, rendered on the 26th day of April, 1912, as well as the decree overruling his demurrer to the bill of complaint therein, in that certain suit pending therein, No. 13,257, on the docket of said Circuit Court, in which the United States of America was plaintiff, and the said Powhatan E. Causey and others were defendants;

It is ordered that the Clerk of said District Court transmit to the said Circuit Court of Appeals a duly certified transcript of the pleadings, orders and decrees in said suit and of the Master's report
41 therein, and that he transmit to said Circuit Court of Appeals, in the original, all the testimony taken in said cause.

It is further ordered that said petitioner, appellant, be dispensed from the necessity or requirement of paying for said transcript, as well as from giving bond or other security to pay the costs of said appeal, and that he be not required to cause the record therein or any part thereof to be printed.

Ordered this 22nd day of July, A. D. 1912.

(Signed) DAVID D. SHELBY,
U. S. Circuit Judge, 5th Circuit.

Assignments of Error.

Filed July 20, 1912.

In the District Court, Late the Circuit Court, of the United States for the Eastern District of Louisiana.

No. 13257.

THE UNITED STATES OF AMERICA
vs.
POWHATAN E. CAUSEY et al.

Powhatan E. Causey, one of the defendants in the above numbered and entitled cause, having prayed an appeal from the final decree rendered therein against him on the 26th day of April, 1912, now presents and files his assignments of error to the said final decree and to the decree of the late Circuit Court, now the District Court, of the United States for the Eastern District of Louisiana, overruling his demurrer to the bill of complaint therein, as follows:

1. The Court erred in overruling his demurrer to the said bill of complaint;

42 2. The Court erred in not sustaining his demurrer and dismissing said bill of complaint, for the reasons:

(*a*) The said bill of complaint, seeking to cancel a certain patent granted to him by the United States, conveying certain land therein described to him, did not appear to have been filed by any lawful authority on behalf of the Government, but, on its face, said bill showed that it was exhibited on behalf of the United States by one H. Generes Dufour, Esq., as Assistant United States Attorney;

(*b*) While said bill of complaint showed on its face that said defendant, Powhatan E. Causey, acquired the said land by purchase, under the Commutation Laws of the United States, no tender back was made to *her* of the consideration paid by *her* for the same;

(*c*) The Court erred in sustaining the Master's report filed, and in not sustaining defendant's exceptions thereto, in said cause against him and erred in rendering a final decree cancelling and annulling the patents so granted to him by the United States;

(*d*) The Court erred in not finding on the evidence in favor of the defendant, Powhatan E. Causey, and in not dismissing the said bill of complaint;

(*e*) The Court erred in finding against appellant on the testimony that at or before the time he made Homestead entry No. 21,337 on March 19, 1900, he had entered into any contract, agreement or understanding whatsoever with his co-defendants, or either of them, or that any other person should have an interest in, or in any part of, the land so acquired by him;

Wherefore, by reason of the aforesaid many errors to his prejudice that have entered into the record, proceedings and decrees of said Court, he prays that said final decree be reviewed and reversed and said suit dismissed.

(Signed) T. M. MILLER,
Counsel for Appellant.

43 *Statement of Evidence for Complainant.*

Filed June 8th, 1914.

In the United States Circuit Court of Appeals for the 5th Circuit, Eastern District of Louisiana, New Orleans Division.

No. 2420. In Equity.

POWHATTAN E. CAUSEY, Appellant,
vs.
UNITED STATES, Appellee.

To the Clerk of said Court:

The undersigned United States Attorney for the Eastern District of Louisiana, representing and appearing herein for and in the name of the United States of America, Appellee in the above numbered and entitled cause which has been appealed to the Supreme Court of the United States from the decree rendered on April 12, 1913, requests that you will not include in and incorporate into the transcript of appeal the entire testimony given by the witnesses L. H. Maisenbacher, James Tanner, J. D. Lodwick, Henry Nickens and Byrd McCrory, so that, in compliance with equity rule No. 75, the transcript of appeal will show that the witnesses above named testified as follows:

That L. H. MAISENBACHER, on being duly sworn, said, on direct examination:

I made a homestead entry in Ascension Parish. Mr. Cox got me to make it. I had an agreement in regard to it which I made with Mr. Cox who was to put up the money, claiming he was the agent of Mr. William H. Wright. They were to put up all the money and bear all the expense, fees, etc., and such expenses as go to the Land Office and I was to make out final proof and homestead the land. I made commutation proof which Mr. Wright paid for and I was to give him title to one half of the homestead. This homestead
44 was contested and I lost it. I relinquished it. Mr. P. E. Causey got me to relinquish it. I had a conversation with

Mr. Causey about this land. He told me — had made an agreement to give one half of his land to Mr. Wright. The agreement which I signed relinquishing this homestead was a written agreement similar to document marked X. I.;

and that on cross-examination he said:

I am thirty two years old, reside at Hotort in Ascension Parish, am a farmer, have been a farmer all my life, the contract which I signed was made with Mr. Cox and I had no contract directly with Mr. Wright. The written contract that I made with Robert H. Cox was signed by me after I had made application to homestead the land. There was a verbal contract made before I made application for a homestead. I lost my land by reason of the contest of Cora Harrison. Mr. Causey told me Mr. Wright was her attorney in that case. I had settled on the land and was improving it but I did not defend the contest because Mr. Causey said it was no use as I didn't have the money to buy it in and that Mr. Wright as attorney had the money and he could buy it and that, therefore, it was not worth while for me to go against it. I had no proof when I signed the contract with Cox that he had authority to bind Wright except Cox's word for it. I did not pay Wright or Causey or Cox anything and I do not owe them anything for when my homestead was contested they took the land and Mr. Causey told me they held nothing against me. Mr. Wright was to get half of the land and that is why I don't think I owe him anything. When I made my homestead entry I made an affidavit before the Deputy Clerk of Court at Donaldsonville but the latter part of the affidavit which I made was not read to me. I was asked if I homesteaded for a home and that is all. I didn't answer any question and if there was anything wrong in the affidavit I am not aware of it. I was asked by Mr. Fernandez if I was homesteading this land for a home and if nobody else was living on the land. I did not read the affidavit and I did not know what was in it. I was not asked to read it. I understood that in making this affidavit I was to get this land for my own use and benefit and I calculated it that way.

2nd. That JAMES TANNER, on being duly sworn, said, on direct examination:

I made a homestead entry in Ascension Parish. I had an agreement with regard to it by which I agreed to give Mr. Bradford and Mr. Wright one half. I made this agreement with Mr. Powhattan Causey who told me Mr. Wright and Mr. Bradford would furnish all the money to make the entry if I would make the entry and give one half of the land to Wright and Bradford. I was to make a fourteen months' entry and Mess. Wright and Bradford were to pay for the commutation. I made a deed to one half of this land to Mr. Wright and I sold the other half to Mr. Bradford, containing eighty (80) acres. I signed the agreement to give them one half of this land out in the woods before I made proof. I cannot read to amount to anything.

3rd. That J. D. LODWICK, on being duly sworn, said, on direct examination:

I made a homestead entry in Ascension Parish in the New River District. I made an agreement with Mr. Bob Cox to give one half of the land to Mr. Bradford and Mr. Wright. I signed a written agreement which I gave to Mr. Cox and which he sent to Mr. Wright.

I signed the document marked X. I. which Mr. Cox gave me.

The expenses of my entry were paid by Bob Cox through Captain Bradford. I completed my entry and stayed on the land and made final proof, and being under the impression that the homestead entry made by me would not benefit me and that it was a fraudulent entry I returned the property to the Government. I know Powhattan Causey.

He made an entry in the same part of the country and I talked to him about it. He told me — had received a communication from Captain Bradford in which he had given him (Causey) notice
46 that if he remained long on the land he would expect him to pay rent and he told me further he had an agreement with Captain Bradford by which he (Causey) was to give him (Bradford) one half of this land. I was one of the parties that carried to J. M. Chandler his entry as I had taken up the business until Mr. Powhattan Causey took charge of it I recommended to Z. W. Causey and J. M. Chandler to sign certain agreements of the same kind as the agreements marked X. I., X. 2., and X. 3. which I handed to them until Mr. Powhattan Causey took charge. Powhattan Causey told me concerning Z. W. Causey's entry when the latter was having some timber cut off the land he had entered: "That little scoundrel has got all the timber cut off of that land that I had set aside for Bradford—that 80 acres."

4th. That HENRY NICKENS, on being duly sworn said on direct examination:

I made a homestead entry in Ascension Parish in the New River District.

I went to Donaldsonville and there met R. H. Cox who told me William H. Wright was his land lawyer and that he would pay for my homestead. He and Mr. Powhattan Causey asked me to sign an agreement by which I would give one half of this land to William H. Wright which I declined to do and I returned mine back to the Government.

After this, William H. Wright and Powhattan Causey came out to the Burnside Sugar House and asked me to sign this agreement and on cross-examination said: I can read a little, not much. I had gone to Donaldsonville to make my application to homestead land and also to make affidavit both of which I made before I was asked to make a contract concerning it and who, on re-direct examination, said: The document sent me had my name on it and I read it. It was an agreement by which I was to give William H. Wright one half of the land which I was to homestead. When Wright and Causey came to the Burnside Sugar House they asked me if I was

going to sign that agreement and I told them "No." I told
47 them I could not homestead land if I had to give one half of it to secure the homestead.

5th. That BYRD MCCRORY, on being duly sworn, said, on direct examination:

I made a homestead entry of land in Ascension Parish in the New River District. I made an agreement with Robert S. Cox to give him $200.00 for my title and he was to pay all of the expenses.

I cannot read, but some time after I was asked to sign an agreement in regard to this homestead and Mr. Powhattan Causey told me it was an agreement by which I was to give Mr. Wright one half. I refused to sign this agreement. I was first asked by Mr. Powhattan Causey to sign it and then Mr. Wright came.

This was all before I had made my commutation proof, and that, on cross-examination, he said: I got no money from Cox, Wright or Causey. I know Wright for I was introduced to him by Powhattan Causey. I understood, from what Mr. Cox said, that he wanted me to sign a paper. He handed me a pencil and I said "I cannot read it so please let me know what it is."

He answered that it was a paper which I was to sign giving Mr. Wright one half of the land which I was to homestead. I refused to sign it and he returned a second time and the third time he came he was accompanied by Mr. Wright.

The foregoing requests are made in compliance with that part of equity rule 75 which provides that the testimony of witnesses shall be stated in narrative form and in this communication I beg to state that I have on this day, the 11th of May, 1914, furnished a copy of this amended præcipe to Messrs. T. M. & J. D. Miller, Solicitors for Appellant.

Yours respectfully,

(Signed) WALTER GUION,
United States Attorney, Solicitor for Appellee.

48 *Statement of Testimony for Defendant.*

Filed June 8th, 1914.

In the United States — Court of Appeals for the Fifth Circuit, Eastern District of Louisiana, New Orleans Division.

No. 2420. In Equity.

POWHATTAN E. CAUSEY, Appellant,
vs.
UNITED STATES, Appellee.

To the Clerk of said Court:

Counsel for Appellee having requested you in making up the Transcript of the record herein, on Appeal to the Supreme Court,

to include among other testimony, that of J. D. Lodwick, a witness for the United States, as abstracted by him, you are now requested, on behalf of the Appellant, to add the following testimony of the same witness given on his cross-examination, as follows:

That he only knew that his own expenses in making his Homestead entry were paid by Bob Cox, through Captain Bradford, was because the said Cox told him that Bradford was the party; I have been an educated man—A school teacher, & know how to read & write. I made my application & affidavit for a Homestead entry before the Clerk of Court of Ascension Parish, & then swore as follows:

"I am not acting as agent for any person, corporation or syndicate in making such entry, nor in collusion with any person, corporation or syndicate to give them the benefit of the land entered or any part thereof or the timber thereon; that I do not apply to enter the same for the purpose of speculation, but in good faith for a home for myself, and that I have not directly or indirectly made and will not make any agreement or contract in any way or manner with any person or persons, corporation or syndicate whatsoever by which the title which I might acquire from the government of the United States should enure in whole or in part to the benefit of any person except myself."

I read that affidavit & I signed it, & when I made my five
49 years' proof afterwards, I swore to the same facts.

Asked by counsel for J. L. Bradford: "How could you make those affidavits then & swear to the truth, if you had made a contract which you testified you did: he answers:

"Simply because I was willing to believe that you were a man & a lawyer, & knew precisely what you were doing, & those parties made their entries with you, & were not then liable to anybody."

Asked by Mr. Bradford: "Is that your answer," he says:

"Yes, sir, & that there was no fraud, that you would pay what the government were exacting."

"I understood that from Mr. Wright & Mr. Bob Cox. I did not understand it from Mr. Bradford."

Asked by Counsel: "Would you take any oath on any subject that Mr. Bob Cox, or Mr. William H. Wright told you that it was right to do so?" He answers:

"I would have done so at that time. Yes, sir."

"I have sold my land & got the money for it, & spent it. Have relinquished my title to the United States & have applied to re-enter the land if the government will allow it. I have no hope at all. To tell the truth I don't think I have any right to accept anything from the government. I think the government is very lenient with me if I acknowledge what I have done, to keep me from going to jail. I am stating facts whether I go to jail or not."

Asked by the Master: "When did you make your application for your land, to get it back. How long ago?" He answered:

"I made my final proof in 1902—I think it was in 1893. I had made my application to get my land back on the ground that it was a fraudulent entry. I was not afraid to do that, & had been told

that the entry was fraudulent, & the government, if I would admit it as a fact, that I might possibly be exonerated and get my land back. I sold my land immediately after making Final Proof to Captain Bradford, the deed was made to Mr. Fluker, Captain Bradford not being then in town, the consideration which I received being $400.

50 Asked by Counsel: "Are you able to refund any of that money that you got for the land in case your entry is cancelled." He answers:

"No sir, I am not able to pay any part of it. I have not got anything. I don't own a horse. I don't own any land:"

Asked by Counsel: "You hope to get your entry back"? He answers:

"No sir, I have no hope at all."

Asked: "Are you trying to get it back?" He answers:

"I have not said anything to any attorney. I have not communicated with him. I don't know anything about it. I have not bothered with it. I tried to get it back, but know nothing about it for the last 12 or 14 months. My attorney is T. J. Hickman, living in New Orleans. I have not instructed him to withdraw my application & Affidavit."

P. S.—Please take notice that under Rule 75, of the New Rules in Equity, we have on this 14th day of May, 1914, furnished a correct copy of the above & foregoing to the Honorable Judge Guion, attorney for the Appellee in the above & foregoing suit.

Respectfully,

(Signed) J. L. BRADFORD,
Of Counsel.
T. M. MILLER,
Att'y for Appellant.

In the United States Circuit Court of Appeals for the 5th Circuit, Eastern District of Louisiana, New Orleans Division.

51 In Equity. No. 2420.

POWHATAN E. CAUSEY, Appellant,
vs.
UNITED STATES, Appellee.

To the Clerk of said Court:

The undersigned Solicitors for P. E. Causey, Appellant in the above entitled cause, which has been appealed to the Supreme Court of the United States from a decree of April 12, 1913, requests that you will not include in the Transcript of Appeal the entire testimony of the witnesses for the United States, Z. W. Causey and William H. Wright; and the witnesses for Appellant, J. L. Bradford, & P. E. Causey; but in lieu thereof, the following statements in narrative form, of said witnesses:

so that in compliance with Equity Rule No. 75, the Transcript of appeal will show in narrative form, the testimony of said witnesses; that is to say:

1. ZACHARY W. CAUSEY, sworn as a witness for the United States, in his direct examination says:

I know Powhatan E. Causey and knew him in February, 1908, and before. He is a Cousin of mine. I believe he was acting in some cases as Agent for Mr. Wright in that part of the country. He went with me, but did not have anything to do with my entry. Am sure of that. And that he did not get me to sign a Contract. I dealt directly with Wright.

2. That WILLIAM H. WRIGHT, a witness sworn for the United States, says: On direct examination:

In 1897, I was Clerk for J. L. Bradford, & a Notary Public; living in New Orleans. No one represented me in Ascension
52 Parish to get people to sign agreements such as Document X, 1. Mr. Cox did not. The form shown me, marked X 1 is in my handwriting. Cox represented me in other matters, but not in that. I intended to make such an agreement with those with whom I did business. Such people were those coming to that country making homestead entries of public lands. No such agreements were ever signed that I know of. I did not represent Captain Bradford in procuring people to make Homestead entries & Perfect those entries. I represented them myself. I drew up Document Marked X 1. It is in my handwriting. I had no such contract like it with Powhatan E. Causey, nor anyone else. I paid Cox $10 for each Homestead entry he would get for me, & he got somewhere in the neighborhood of 25. I never gave him forms of contracts such as X 1, to be signed by Homesteaders. Not a single one. My fee for getting entries was to be from $100, to $200, according to the trouble of getting & perfecting the entry. I was not to get Bradford to perfect such entries, but was attending to it myself. I attended to the legal business in making the entries, and Bradford had nothing to do with it. At the latter end he had a good deal to do with it in trying to have suspensions of the entries released: "Special Agents of the Government had gone into the country & reported there were great frauds in connection with the matter, and had all the Homestead entries & Homestead Applications in that territory suspended." "I say, afterwards, when the entries had been perfected by the making of fina lproofs, Captain Bradford having invested in the lands to some considerable extent in the shape of sales & mortgages, he had then an interest in relieving them from suspension, & in having the titles perfected. That is his connection with the matter." He was not paid by anyone to do these things. He owned part of the land, & he had to perfect his own titles. And when the troubles came on he had to defend the entries: But that was not done by agreement to buy half the land; There was no agreement with P. & Z. Causey under

which I or Captain Bradford was to have any interest in
53 the lands, either for services, or money advances: Powhatan Causey is still alive. Powhatan Causey moves about. He is now out somewhere in Livingston Parish. Captain Bradford bought wild unimproved land from P. E. Causey, Mattie Webb, & Z. W. Causey; those people retaining their improved lands: I do not know how the forms of Contract X 1, 2, & 3 got out of my possession. I did not give them to anybody, nor show them to anybody. I wrote them because I wanted to make such Contracts with those people. Afterwards I must have thought it was not lawful, & therefore I abandoned the thing. The forms of these agreements, X, 1, 2, & 3, show themselves that each had reference to entries previously made; that is, at the time that each form was written by me the particular entry had been made & numbered & dated: "I do not say I ever had such an agreement, but that was the form of the agreement contemplated." I never authorized Mr. Cox to make any agreement under which any person who was to enter land through me would make a conveyance to me of any portion of the land in consideration for my services. It appears from the instruments X 1, 2 & 3, that the persons named in them had already made their entries. I don't know it otherwise.

3. That JAMES L. BRADFORD, a witness sworn on behalf of Appellant, P. E. Causey, on Examination in Chief, says:

I am named one of the defendants in these several cases, including the suit against Powhatan E. Causey. I had no agreement, nor was I a party to any agreement, under which I was to acquire any land of such defendants, made prior to the execution of any deeds to me, or made with any one or more of said defendants prior to any entry made by any one of them. At the time the conveyances to me were made by P. E. Causey & others I had money to invest, & much government land scrip of different kinds which I wanted to turn into money, which was worth much less than $1.25 per acre in the market, & was willing to use it in aiding Homestead entrymen in paying for their lands. And as I had generally
bought such scrip at about 90 cts. on the acre, by selling it
54 to the settlers at the government price of land, that is, $1.25 per acre, I could make something by it. In 1884, I was attorney for the then owners of the Houmas Claim, Burnside & Kenner, & Succeeded before the Supreme Court in settling the title to that celebrated Grant, the court fixing the depth from the Mississippi River at 80 arpen-s, & the residue of the land became public lands & was surveyed as such, & there was much competition among the settlers to secure United States Homesteads of the lands back of the 80 arpent line. And, as I knew the lands would ultimately be of value, I tried to obtain all I could in a lawful way, & in this way, with cash & with land scrip, I did succeed in acquiring two, or three thousand acres. The people who made Homestead entries, many of whom had employed William H. Wright, my Clerk & typewriter, & a Notary Public, when they made their Final Proofs applied to me to help them pay for their lands, & I did so, by fur-

nishing them land scrip, & maybe in one or two instances, cash, in whole or in part. Afterwards, after they had completed their entries, and had obtained from the government their equitable titles, & could lawfully convey, I purchased from some of them portions of their land, in every case taking the unsettled part, & in two or three instances, I purchased all the lands, and from time to time, year after year, I spent large sums of money in clearing, building upon & improving generally the lands so acquired. At that time the lands had little or no value, & the war of the government upon the titles there makes this true, even now. All I have said applies to Powhatan E. Causey, Z. W. Causey, & Mattie Webb. I furnished to each one of them, when they made final proof, the land scrip with which they paid the government price, & did so without any contract or agreement at all with either one by which he or she was to furnish me or give me or sell me or to transfer to me, and land at all. They were poor people, & glad to get lands for nothing, & as a general thing whenever he or she could obtain a title under which he or she could sell, or borrow money,
55 they were eager to do it. They were people to be trusted & no one of them ever refused to pay me for my land scrip after he or she was able to do it. I was willing to take such risks & did take them. Mr. Wright was well acquainted with the United States land laws & had much leisure of his own, &, as I was generally absent from my office in Summer time, he was allowed to carry on, on his own account, a good deal of land business; especially in aiding people to make homestead entries of United States lands & State land, & in that way he made, or helped to make, a good many homestead entries in Ascension Parish. He has been my clerk since 1882, & is still such. I cannot say that I knew that Mr. Wright had any contract with P. E. Causey when he made his Homestead entry, or before. I don't think I knew Mr. Causey at that time or for some years afterwards. I was not the attorney for Mr. Causey until after he had transferred his land or part of it to me, & then I was his attorney & my own in seeking to have his entry relieved from suspension & patented. I was not his attorney when his entry was made & did not know him then. I had nothing to do with making his Homestead entry. Don't think I knew him at the time, or for some years afterwards. That was 8 or 10 years ago. I had much of such business & much other business, & have not a very good memory. I trusted those people with the land scrip without written contract. I am of a trusting nature. I trust a good many men in business. I have trusted many to my sorrow. I had to pay a trust debt of $3,500 yesterday. I did not say I transferred the scrip to the government for Powhatan Causey. I say I delivered it to the Register & Receiver for him. I have no recollection that I did it on any writing or other security. I had a great quantity of land scrip, & kept it in my safe. Mr. Wright, my clerk, having the combination, & it was all assigned in blank, so that upon delivery of it in the land office, the Receiver could write in the name of the owner in the blank left for that purpose,
56 which completed the assignment to the particular entryman so surrendering; & in selling it or transferring it, to

any particular person, it needed but manual delivery, like the delivery of a bank bill or a promissory note endorsed in blank. No act of assignment was necessary save what had been made on the scrip at a previous date. It went from hand to hand, like a bond or bank bill. All the scrip I ever bought was assigned in blank in that way, & when I say I furnished any of it to any homesteader, I mean that I, or my clerk, simply handed it in to the land office, when, after examining the final proof in the particular case & approving it, they were ready to receive the price of the land, as the government price. Mr. Causey never paid me in cash. He paid me in land; refuse land, retaining that he lived on & had improved. The transaction was open, honest, in good faith, & the transfers duly recorded. Under the law it was entirely lawful & usual for homestead entrymen, even before they had made final proof and were invested with the equitable title of the government, to mortgage their land for money with which to live upon & improve their land. The mortgagee taking the risk of cancellation for other causes, but a mere mortgage itself would not be one of them. The cost of the scrip to me was much less than $1.25 per acre. I bought much of it at 90¢ per acre, & don't think I ever paid more. The government retired it at $1.25 per acre. I was willing to take considerable risks on account of the profit from the sale of the scrip. On August 23, 1901, I bought from Causey, his land, 157.77 acres, for the price of $800, the sale being recorded in the Parish of Ascension September 5, 1901. As well as I can remember, after so long a time, aided by fragments of memoranda, I can say that this $800, was made up in this way: On March 6, 1901, I find I gave him a check on Canal Bank of New Orleans for $60, & on March 11, same year, gave him my check on same bank for $65. On June 28, 1901, I gave him my check on same bank for $24.50, & on August 12, 1901, I paid the bill of H. Stern & Co., against Causey
57 for shoes, amounting to $6.25. All these items amounting to $155.75, & on August 24, 1901, I paid him, Causey, in cash, $403, & at the same time surrendered to him certain of his notes I held amounting to about $590, footing up, in all $1,148.75. After so long a time I can't remember anything more. On August 24, 1901, I gave Mr. Causey, by Deed, the right to redeem a part of the land sold me the day before, being S. E. ¼ of N. W. ¼, & N. E. ¼ of S. W. ¼ of Sec. 33, about 80 acres, where his home & principal improvements were situated, on condition that he would pay me $750, in certain instalments & at certain times, for which he then gave me his notes, with interest, & I gave him various extensions on his mortgage, for each of us considered & treated the two transactions of August 23, & 24, as a conveyance to me of really only a part of said land, viz, N. E. ¼ of N. W. ¼, & S. E. ¼ of S. W. ¼, or lot 2, and as a Mortgage by him in my favor for the sum of $750 upon the remainder of his land, or the central part he had improved and lived upon. This Mr. Causey was dissipated and always strained for money, & when I got tired of helping him & stopped lending, he turned against me & quarreled with me. I repeat that I never made or entered into any contract, agreement,

or understanding with Mr. Causey prior to his Homestead entry under which he was to give, or sell, or convey to me, directly or indirectly, any portion, or the whole, of his land. And I don't believe that he ever made any such agreement with William H. Wright.

4. POWHATAN E. CAUSEY, called as a witness in his own behalf, being sworn says:

I live in Livingston Parish. Am 57 years old. Have been a farmer for several years. Made a Homestead entry in Ascension Parish some years ago & lived on the land until the Fall of 1905. I rented it to the Miles Planting Co. & I improved it. The lands,
with improvements & all, 160 acres would be worth several
58 thousand dollars. In making my homestead entry I had
not much assistance. I employed Mr. Wright to help me. My contract with him was verbal. There was another person claiming the land, & I told Mr. Wright, if you will help me I will give you $200. What I want is for you to help me. There was no Contract between me & Mr. Cox. It is not true that I made a contract with Cox that he was to make my Homestead entry for one half of the land. It is no more true than that I am in Mexico today. Not a word of it. It is not true that I was employed by Wright to take Cox'es place in securing Homestead entrymen for him at $10 a piece. I had no contract or understanding at all with J. L. Bradford, with respect to my entry that I can remember until I asked Mr. Wright if he would loan me some money without any contract, & I would give a note. I told Bradford I never would sign any contract. I sold to Bradford the North 40 & the South 40 of my entry. It was an honest, bona-fide sale. I owed him money & I wanted to pay him. I payed that much & owe him yet. Mr. Hunt, Special Agent came to my house & examined into my entry & got me to make an affidavit. Sam Moore had told me to make an affidavit & I said if it would do you any good I will do so, to the Special Agent. I said "I will do it to stop all foolishness." Mr. Hunt soon after that wrote me a letter trying to get me to come to New Orleans & Meet him at an appointed place on Canal Street & fix up matters with him, saying "That it will do me a good deal of good." Soon after I went to New Orleans, & met him at his office, and said "Did you write this letter to me." He said "Yes sir." I said,—Why did you do it. He said, "I am sorry for it." I couldn't tell why he wrote me such a letter. "But I thought he tried to bribe me." I said. "You made a false report against me & you ought not to have done it"; & he said he was sorry for it. I made an affidavit he wrote out & asked me to sign, & it was afterwards I got his letter.
I went down to New Orleans at his request. He said he had
59 made a report against me & he hated to have done it. Have
lived in Ascension about 10 years.

On X-examination by the U. S., he says:

I employed Mr. Wright to fix up my homestead entry, & before the entry was made I gave him a note. Don't remember the amount. Gave him several notes, & gave Mr. Bradford one. Didn't

owe him anything at that time: That was to secure him for what he was going to do. After I got my land & made my proof, I sold Captain Bradford the North 40 & the south 40, & got back the note of mine for $200, as part consideration for the sale. Mr. Wright did not pay the expenses of my entry in the land office. I paid that myself. The expenses & witness fees were about $20. I still have the balance of my land. I am renting it to Mr. McFarland of the Miles Planting Co. I still have the part with the improvements on it. The part I sold to Bradford had no improvements on it. My land was the best land in that section of tne country. I would take $50 an acre for it. Am offered $35. Don't know if I would take it or not. First employed Mr. Wright in 1896, or 1897. Can't remember exactly. Had not then made my Homestead entry but was living on the land. Mr. Gonzales had an entry of the same land before I had it, & I offered him $500 if he would give it to me, & he wouldn't. I moved on the land & went to work on it & told Gonzales I was going to bring Contest against him, & I got Mr. Wright to help me do it. I did not know Mr. Wright before. I went to New Orleans & met Mr. Wright in the Custom-house & told him I would give him $200 if he would help me out, & gave him a note at that time, & afterwards another. Can't remember, Captain Bradford, I believe, came in about 3 or 4 years later. Captain Bradford said he would lend me some money. After that he would loan me more money. Am sure I never made any agreement with Wright to enter my land & to give him one half. Document Marked X1, is in Mr. Wright's handwriting. I don't know that I ever saw any other document like it. I might but I don't remember. It's
60 been 10 years ago. I told Wright I wouldn't handle that kind of business, because I believed it was against the law. He is a close friend of mine.

On redirect examination he says:

It is a long time ago since I first met Captain Bradford in connection with the transaction. I knew Mr. Wright first, & when I had my dealings with Wright I didn't know Captain Bradford. I said to Mr. Wright about the agreement according to the form in X1, etc., "Don't you do it, it isn't right to make any such agreement, the government will prosecute you for it."

"I know I wanted to get a piece of land & I was introduced to him, & I got him to help me out. I don't think he proposed any such agreement to me, because he knew I was opposed to it, & I think my brother told him so."

Redirect examination by appellant:

After I made Final Proof I sold part of my land to Captain Bradford. The first Deed, dated August 23, 1901, was a warranty Deed, the consideration being $800, & by it I conveyed to Captain Bradford all of my land. Can't recollect if that was the first money transaction with him. After making my Proof, I settled with him for borrowed money, & it was a bona-fide, honest transaction. I had received $800. By the Deed of August 24, I had the option to buy back the two middle forties, containing my home & improvements, & that was an honest transaction, & I still own that land

under that option, which had been extended from time to time, & it now is an option to buy back at any time up to the 1st January, 1909, & it is an honest transaction. Under it I have rented the property for 3 years to Mr. McFarland, to commence January 4, 1906, the rent to be $480 each year. And later I borrowed more money from Mr. Bradford & I assigned to him the rents Mr. McFarland is to pay, as security for the payment of the $400, with interest so borrowed. It took a long, bitter & protracted contest to break Mr. Gonzales' entry, & Mr. Wright was my attorney.
61 It took over 2 years.

Re-X-examination:

After Mr. Bradford extended my option, I rented to Mr. McFarland, the 80 central acres of my land, at $6 an acre. I have collected that rent. I got $480 in advance. I got, after that a loan of $400 from Captain Bradford, assigning him this year's rent. I don't remember what was the object of making the two Deeds of 24, & 23 August, 1901. The Deeds were made in New Orleans, in Captain Bradford's Office. Wright wrote out the Deeds, while he was in the Parish Prison in New Orleans. Cantain Bradford & I went there, & then went back to his office. Said Deeds were not made on the same day. I owed Captain Bradford so much money & I gave him bill of sale for my land, for all of it. He said "I will just take a bill of sale for the land & let you have your own time to pay it." And he has done so. I sold him one half.

P. S.—Please take notice that in pursuance of Rule 75 of the Equity Rules we have on this 15th day of May, 1914, furnished to the Honorable Walter Guion, Attorney for the Appellee in the above entitled suit, a true copy of the above and foregoing request.

Respectfully,

(Signed) T. M. MILLER,
Att'y for Appellant.
J. L. BRADFORD,
Of Counsel.

United States Circuit Court of Appeals, 5th Circuit, Eastern District of Louisiana, New Orleans Division.

No. 2420. In Equity.

POWHATAN E. CAUSEY, Appellant,
vs.
UNITED STATES, Appellee.

62 To the Clerk of said Court.

SIR: The undersigned Solicitors for P. E. Causey, Appellant in above entitled cause, which has been appealed to the Supreme Court of the United States from the Decree of April 12, 1913, requests that you will only include in the Transcript of Appeal the following portions, in narrative form, of the testimony of Robert H. Cox, a witness

for the United States: Also the following portions in narrative form of the testimony of Samuel M. Burnett, John C. Harris, William B. Thibeau, Henry C. Braud, and Francis Valley, witnesses for the Appellant,—that is to say:

ROBERT H. COX, a witness on behalf of the United States says, on his examination in Chief:—

That he knew Mr. William H. Wright, who was working under a salary for James L. Bradford as his clerk: That he was employed by him, Wright, to get people in Ascension Parish to make Contracts with him as Wright's Agent, under which said Wright was to obtain homestead entries for such persons, on the public lands of the United States in Ascension Parish, he, Wright, to pay expenses of making said entries, and to get from each entryman as his compensation, one half of the land to be entered by each entryman: That said Wright was to pay him, Cox, for each entryman thus secured, the sum of $10: That in this way he, Cox, secured about 37 entrymen, and that Documents put in evidence by the government marked X 1, 2, and 3, represented the general form of the agreement signed by the entrymen: That such agreements were signed in some cases, and not in others: That Wright told him that his, Wright's regular fee would be $200 in each case, but that, as Captain Bradford was rich and had plenty of land scrip, if you Cox, and the entrymen in each case, would give us one half of the land, or $200, we will get you the land: meaning that he, Wright and Bradford would get it: That
63 he, himself, made a Homestead entry under such a contract: That Wright paid him $10 in each of 8 cases, being the cases of Ernest V. Floid, E. E. Martin, B. F. Webb, Mattie L. Webb, Carl Fach, P. E. Causey, Wm. E. Knox, and Joseph D. Lodwick: That he Cox, made such an agreement with Powhatan Causey. That later, Powhatan Causey got his job, after he, Cox, and Wright had a falling out: That Wright told him it was the same:

That said Robert H. Cox thereafter testified, on Cross-Examination, thus, in narrative form:

"I made my commutation proof in support of my Homestead entry at Donaldsonville, La., before the clerk of the court for Ascension Parish, and then I swore as part of my proof:—

"That no part of my land had been alienated, but that I was the sole bona-fide owner as an actual settler:

Asked by counsel for Appellant: How could you take that oath if you had previously made a contract for half the land, he said:

"Mr. Wright said it was no violation of the law. He said that at the time I made my entry,—the time I made the agreement to give him half the land, or $200: He said it was no violation of the law. I also swore in making my commutation proof that I had not mortgaged, or sold or contracted to sell any portion of my entry";

Asked by counsel for Appellant: "You have sworn a good many times about your entry from first to last? He answers:

"Yes sir. And I have sworn to some things that wasn't right. I have sworn to a whole lot of things that I ought not to have sworn to, I know that." "I remember when Special Agent Peterson came to my house to examine me about my entry. I gave him some in-

formation. I answered a few questions; but I evaded all the questions that I possibly could. I didn't give him any information at all. I treated him with contempt, as Mr. Wright had told me
64 to do. I made an Affidavit before him. I don't remember exactly what I said in it. He was asking me about this land business."

Asked by counsel for Appellant: "Did you not state to him that it was an honest and bona-fide entry, and that you had no contract with Mr. Wright to convey to him one half the land?" He answers:

"I don't remember exactly what statement I made. Of course at that time I knew that I was lying when I told him—when I was making that kind of a statement—it was through whisky, about the affidavit I made. I didn't think he could use it against me. I don't remember exactly what questions that he asked me. I knowed that it was crooked—the day that he came there I knowed that it was crooked".

Asked by counsel: "And you told him that it was straight". He answers:

"I don't remember. I didn't tell him that. I just left it to him to make the proof of it if he could. And he told me, he said he knew all about it." "Mr. Peterson stayed to dinner with me that day. We had Cantaloups for dinner. He complimented my babies. Said they were nice babies. I don't remember about the affidavit I made. Since that I done sat down and told him the whole facts in the case. I didn't tell him the facts before. I didn't tell him the truth." "I told him a lie, and swore to it, of course I did. What else could I do but tell him a lie".

SAMUEL M. BURNETT, witness for the Appellant testified on his examination in chief, as follows:

"I have known Robert H. Cox since 1891; we were close neighbors a long time. About 3 years ago I had a conversation with Mr. Cox about his Homestead entry. He told me he wanted to get me principally, and one or two others, to contest his homestead entry. I refused to do it. I told him it wasn't right. That he would get into trouble, and advised him not to do it. He said he had got through with all his money. That he couldn't own his place. That he had got rid of his money. That he had sold his land for. That he would have his entry contested for fraud, and have it cancelled. That he would try to get it back on the ground that it was an illegal entry, have it cancelled, and then re-enter it, saying Floid had been allowed to re-enter his land:

Asked by Counsel for Appellant: "Was it generally under-
65 stood among the homesteaders back there after Floid got his new entry, and got his land back, that any one of them, by swearing that his entry was illegal, could cancel it and get his land back? He answers:

"Yes sir, it was the general impression".

He says: "I know Cox's general reputation for truth and veracity. It is not good. I would not believe him on oath in a matter in which he was interested."

On re-direct examination, witness Burnett testifies:

Question by the Master: "I want you to explain one statement. On direct examination you testified that there was a general impression among these homesteaders, that any one that would make an Affidavit to the effect that his entry was fraudulent, in that way could get his land back?" He answers: "Yes sir.

Q. You mean, that the impression was, that anybody could do that?

A. Yes sir.

Q. No matter who they were?

A. Yes sir.

Q. And no matter to whom they sold?

A. Yes sir, anyone that made a fraudulent entry, the impression was, that he could get his entry contested on the ground of its being fraudulent, and then re-enter it.

Q. It was on the ground of fraud?

A. No sir, it was on the ground, that Mr. Floid did that same thing, and that was the cause of this impression to be spread out that Mr. Floid did the same thing. He had relinquished his entry, and he was permitted to re-enter. The impression was that
66 if anybody who had made a homestead entry and would swear that it was fraudulent and get witnesses to swear that it was, he could relinquish it and re-enter it. I can mention several entrymen who had that impression, both the Cox's, the father and son told me it was their impression. It was the general talk. A great many thought they could do it:—All homestead people. They thought they could have their entries upset by swearing they were fraudulent.

JOHN C. HARRIS, a witness for the Appellant, testified, on his examination in Chief, as follows:

"I have known R. H. Cox and T. R. Cox for 10 years intimately, and know their general reputation for truth and veracity in their vicinity. It is very bad. In consequence of that general reputation I wouldn't believe either one of them on oath:"

Asked by counsel for Appellant:

Q. What is the general sentiment in that country of late years about surrendering their homesteads, and entering them back again, getting their entries cancelled and getting them back again, he answers:

"Well, they had an idea that they could get their land back again, if they would surrender them to the government. Robert H. Cox had that idea. He talked to me about it. He said he would get his land back by prosecuting you." (Meaning J. L. Bradford):

FRANCIS VALLEY, a witness for the Appellant, on his examination in Chief, says:

"I know Robert H., and Thomas R. Cox. Have known them intimately about 12 years. Am acquainted with their general reputation for truth and veracity in their neighborhood. It is pretty bad. In consequence of it I wouldn't believe either one on oath.

67 WILLIAM B. THIBEAU, witness for the Appellant testified *in* his examination in Chief, as follows:

"I know Robert H. and T. R. Cox intimately, and have ever since I was a small fellow. I couldn't say how long. I know their general reputation for truth and veracity in their neighborhood. It is a pretty bad one. I have known R. H. Cox to be a rascal all his life. I know the general reputation of both of them for truth and veracity in their community, and in consequence of that general reputation I wouldn't believe either one on oath. The general impression among the people that entered homestead land back there was that they expected to get their lands back. I have heard the two Coxes say so. Also James Taner; F. L. Berthelot, and Mrs. Dave Taner, formerly Mrs. Cotton.

By the Master:

Q. When you spoke of their getting their lands back: Back from whom?

A. Back from the government.

Q. Has the government got it?

A. I couldn't say.

Q. How did the land get away from them?

A. They entered it and sold it to Mr. Bradford—So they said.

Q. Your idea of getting it back from the government is Mr. Bradford?

A. Back from Mr. Bradford, if they would give him his money back.

Q. I am trying to get the matter clear. You say they expected to get their land back? They told you that they expected to get their money back?

A. Yes sir.

Q. From whom?

A. From the government. That is Mr. Hunt said if they could come in here and testify about all of this stuff, he would
68 cancel their land, and give it back to them.

Q. That is what they told you?

A. Yes sir.

HENRY C. BRAUD, a witness for Appellant, on examination in Chief says:

"Am 55 years old, reside at Burnside, La. Am paymaster and book-keeper for the Miles Planting Co. for their six plantations situated at Burnside, and am a member of the State Legislature, and know Robert H. and Thomas R. Cox since 1898. Live 3 or 4 miles from them. Know them intimately. Know their general reputation for truth and veracity in their neighborhood. It is bad. In consequence of it I would not believe either one on oath.

P. S.—Please take notice that under Rule 75 of the new Rules in Equity we have on this 26th day of May, 1914, furnished a correct

copy of the above and foregoing to the Hon. Judge Guion, Attorney for the Appellee in the above and foregoing suit.

Respectfully,

(Signed) T. M. MILLER,
Solicitor for Appellant.
J. L. BRADFORD,
Of Counsel.

69 EXHIBIT X–1.

Filed in U. S. Circuit Court of Appeals August 19, 1912.

Whereas Wm. H. Wright has furnished the information & money necessary to make my Homestead Entry No. 18542 dated Oct. 1, 1897, and will also furnish the money to pay government price for same, being the N. E. ¼ of S. W. ¼ of Sec. 45, T. 10 S. R. 3 E.— in Ascension Parish, La.,—and he (Wright) will also pay cost of making my final proof. Now therefore, I, Henry Nickens, do agree & bind myself to make final proof on said entry after I have complied with the law for 14 months,—and as soon as my Final Certificate or receipt issues, to sell & convey to said Wright, free of cost—one-half of said land.

Witness my hand this — day of Oct. 1897.

—— ——.

EXHIBIT X–2.

Filed in U. S. Circuit Court of Appeals August 19, 1912.

Whereas Wm. H. Wright has furnished the information & money necessary to make my Homestead — No. 18540 dated Oct. 1, 1897 for N. E. ¼ of N. W. ¼ Sec. 22 T. 10 S. R. 3 E. in Ascension Parish, & will also pay the government price for same, when I make my final proof, as well as all cost of making said proof. Now, therefore, I, Henry H. McNabb, do hereby agree & bind myself to make proof after my 14 months' compliance with the law, & as soon thereafter as my final proof certificate or receipt is issued, I will sell & convey to said Wright the one half of said land, free of cost.

70 Witness my hand this — day of Oct. 1897.

—— ——.

EXHIBIT X–3.

Filed in U. S. Circuit Court of Appeals August 19, 1912.

Whereas Wm. H. Wright has furnished the information & money necessary to make my Homestead entry No. — dated Oct. 6, 1897, for S. E. ¼ of N. E. ¼ Sec. 22 T. 10 S. R. 3 E. in Ascension Parish, La., and whereas he will also furnish the money to pay the government price for same when I make my final proof after 14 months' residence on & cultivation of same, as well as all cost of making said proof. Now therefore I, Sallie V. Knox, do hereby agree & bind myself, after I make said proof, & when my final certificate issues,

to sell & convey to said Wright the one half of said land, free of any cost.

Excerpts from Exhibit "Bradford 1"—Final Proof of P. E. Causey.

Filed August 19th, 1912.

Testimony of Joseph D. Lodwick.

Homestead Proof. Testimony of Witness.

JOSEPH D. LODWICK, being called as witness in support of the Homestead entry of Powhattan E. Causey for E. ½ N. W. ¼, N. E. ¼ S. W. ¼ & lot 2 of Sec. 33, T. 10 S. R. 3 E., Seder, testifies as follows:

Ques. 1. What is your name, age, and post-office address?

71 Ans. Joseph D. Lodwick, age 57, Burnside.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. I am with the land and claimant.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city of town, or used in any way for trade or business?

Ans. No sir.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. It is a farming land.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. March 1898. March 1898.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. Yes sir, settler is married.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. Never absent.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. About 25, 3 seasons.

Ques. 9. What improvements are on the land, and what is their value?

Ans. 1 dwelling house, & 1 hen house & fencing worth about $800.

72 Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. There are none to my knowledge. Is more valuable for agriculture.

Ques. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. Not that I know of.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. None whatever. I do sir.

(Sign plainly with full christian name.)

JOSEPH D. LODWICK.

I hereby certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 3rd day of July, 1901, at my office at Donaldsonville in Ascension County, La.

[SEAL.] J. B. BOSMAN,
Clerk of Court.

(See note on fourth page.)

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

Homestead Proof. Testimony of Witness.

JOHN C. HARRIS being called as witness in support of the Homestead entry of Powhattan E. Causey for E. ½ N. W. ¼, N. ½ S. W. ¼ & lot 2 of Sec. 33, T. 10 S., R. 3 E., Seder, testifies as follows:

Ques. 1. What is your name, age, and post-office address?

Ans. John C. Harris, age 47, Burnside.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. Yes sir.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city of town, or used in any way for trade
73 or business?

Ans. No sir.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. It is a farming land.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. March 1898. March 1898.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. Yes sir, is married.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and

if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. Never absent.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. About 25 acres, 3 seasons.

Ques. 9. What improvements are on the land, and what is their value?

Ans. 1 dwelling, 1 hen house & fencing valued at $800.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. No sir. Is more valuable for agricultural.

Ques. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. Not to my knowledge.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. No sir. I do.

(Sign plainly with full christian name.)

JOHN C. HARRIS.

I hereby certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 3rd day of July, 1901, at my office at Donaldsonville in Ascension County, La.

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[SEAL.]

J. B. BOSMAN,
Clerk of Court.

(See Note on Fourth Page.)

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from the Minutes of February 19th, 1913.

No. 2420.

POWHATAN E. CAUSEY
versus
THE UNITED STATES OF AMERICA.

On this day this cause was called, and, after argument by James L. Bradford, Esq., and T. M. Miller, Esq., for Appellant, and Louis

H. Burns, Esq., Assistant United States Attorney, for Appellee, was submitted to the Court.

Opinion of the Court.

Filed April 12th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2420.

POWHATAN E. CAUSEY
v.
THE UNITED STATES.

75 Appeal from the District Court of the United States, Eastern District of Louisiana.

Before Pardee and Shelby, Circuit Judges, and Newman, District Judge.

By the COURT:

A majority of the Judges are of opinion that the evidence submitted in the court below on the trial of this case fully justifies the finding that the appellant in obtaining and perfecting his homestead entry was guilty of such fraud as warrants the decree below vacating the patent.

Affirmed.

Judgment.

Extract from the Minutes of April 12th, 1913.

No. 2420.

POWHATAN E. CAUSEY
versus
UNITED STATES OF AMERICA.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel;

On consideration Whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby affirmed.

Petition for Rehearing.

Filed May 3d, 1913.

United States Circuit Court of Appeals, Fifth Circuit, New Orleans Division.

76 No. 2420.

P. E. CAUSEY
versus
THE UNITED STATES.

To the Honorable the Judges of said Court:

The petition of the appellant, P. E. Causey, with respect represents that this Honorable Court, in affirming the decree appealed from as against him, has fallen into grave error in this, that the Court has given undue weight to the testimony of interested, biased, malicious, untruthful and wholly irresponsible witnesses against him, and has not given due weight to his own and the other testimony in his behalf; that the Court has ignored, to his prejudice, as did the Court below, the well established doctrine of the Supreme Court of the United States, as applied by this Honorable Court in other cases, that a mere preponderance of evidence, assuming such to exist here, will not suffice to cancel instruments executed by a private individual, even for fraud, and that a solemn patent of the United States should not be annulled except upon testimony of such character as to command respect and of such quality as justly to produce conviction.

And petitioner respectfully submits that a complete analysis of the testimony of the several witnesses for the Government, as set forth in the printed statement last filed herein, will develop a conspiracy on the part of the Government witnesses to destroy petitioner's homestead rights.

And petitioner prays leave again to call the attention of this Honorable Court to the necessity the Government was under to produce further evidence before submitting its case against appellant, and that, accordingly, about four years after its testimony had been taken, and the perjury and malice of its witnesses fully revealed, felt it necessary to examine Mr. W. H. Wright, who was without pecuniary interest in the result, as a witness, thereby vouch-
77 ing for his credibility, the Government's case being that appellant had conspired with said Wright to defraud the Government in respect to this homestead entry.

It further appears that the said Wright, whose testimony was regarded as essential under the circumstances, testified, with perfect frankness, and completely nullified the theory upon which the case rested, by denying, as did appellant, that any agreement whatsoever had been entered into under which said witness or Captain Bradford was to have any interest in the homestead land.

Petitioner further represents that this Honorable Court has failed to give the proper effect to the uncontradicted testimony of Captain J. L. Bradford, showing how he came to make large advances to appellant, and, ultimately, to acquire from him a portion of the land entered. And petitioner respectfully prays leave to suggest, in connection with his own and other testimony in his behalf, the improbability, if he had perpetrated a fraud upon the Government, of his advertising the fact by such statements as were attributed to him by the self-confessed perjurers testifying on behalf of the Government.

Wherefore, petitioner humbly prays that your Honors will reexamine the testimony for and against him as abstracted in the statements and briefs heretofore filed, and will grant a rehearing of said cause so that his counsel may be able to point out with greater certainty the erroneous conclusion of this Honorable Court against him.

Respectfully submitted,

(Signed) J. L. BRADFORD AND
T. M. MILLER,
Attorneys for Petitioner.

I hereby certify that the foregoing petition for a rehearing is not presented for delay, but that the same ought to be entertained and allowed to the end that justice may be done.

Respectfully submitted,

(Signed) T. M. MILLER,
Attorney for Appellant.

78 *Order Denying Rehearing.*

Extract from the Minutes of June 2nd, 1913.

No. 2420.

POWHATAN E. CAUSEY
versus
THE UNITED STATES OF AMERICA.

Ordered that the petition for rehearing filed in this cause, be, and the same is hereby denied.

Petition for Appeal and Order Allowing Same.

Filed April 1, 1914.

No. 2420. In Equity.

In the Circuit Court of Appeals in and for the Fifth Circuit, Eastern District of Louisiana, New Orleans Division.

POWHATAN E. CAUSEY
vs.
UNITED STATES.

Petition for Appeal to the Supreme Court of the United States Filed March 31st, 1914, in the Circuit Court of Appeals in and for the Fifth Circuit, Eastern District of Louisiana, New Orleans Division.

To the Honorable Don A. Pardee, presiding judge of the Circuit Court of Appeals in and for the Fifth Circuit and Eastern District of Louisiana, New Orleans Division:

The above named plaintiff Powhatan E. Causey, feeling himself aggrieved by the decree against him made and entered in this cause by the above named court on the 12th day of April, A. D., 1913, does hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the Assignment of Errors which is filed herewith; And he prays that his Appeal be
79 allowed and that citation issue as provided by law; That a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated may be sent to the Supreme Court of the United States sitting at Washington, in the District of Columbia. And your petitioner further prays that the proper order touching the security to be required of him to perfect his Appeal be made. And petitioner herewith files as part hereof, an affidavit that the property in controversy in said suit is of the value of $1,000.

(Signed) T. M. MILLER,
Solicitor for Appellant P. E. Causey.
J. L. BRADFORD,
Solicitor for Appellant.

The appeal prayed for is allowed on petitioners giving bond with security conditioned according to law in the sum of three hundred dollars—and the same is made returnable within sixty days from this date—April 1st, 1914.

(Signed) DON A. PARDEE,
Circuit Judge.

Affidavit as to Value of Property Involved.

Filed April 1st, 1914.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Before me, the undersigned authority, this day personally appeared James L. Bradford, to me well known as a credible person, who being by me first duly sworn doth depose and say:

That the tract of land described as the East ½ of the Northwest quarter, the N. E. ¼ of the S. W. ¼, and the S. E. ¼ of
80 S. W. ¼, or lot 2 of Section 33, in Township Ten south, Range Three East, containing 157.77 Acres in the Bill in Equity brought by the United States against Powhatan E. Causey and others, No. 13257 in the then Circuit court of the U. S. for the Eastern District of Louisiana, filed on the 26 day of July, A. D. 1904 is of far greater value than the sum of one thousand dollars exclusive of interest and costs.

(Signed) J. L. BRADFORD.

Sworn to and subscribed before me this 30th day of March, 1914.

(Signed) FERGUS KEPNAN,
[SEAL.] *Notary Public.*

Assignments of Error.

Filed April 1st, 1914.

In the Circuit Court of Appeals in and for the Fifth Circuit and Eastern District of Louisiana, New Orleans Division.

No. 2420. In Equity.

POWHATAN E. CAUSEY, Appellant,
vs.
UNITED STATES, Appellee.

Petition for Appeal Filed March 31, 1914, in the Circuit Court of Appeals in & for the Fifth Circuit & Eastern District of Louisiana.

Assignment of Errors by P. E. Causey, Appellant.

And now on this the 31st day of March, 1914, comes the Appellant, P. E. Causey in the above and foregoing cause and says that the decree against him entered and filed on the 12th day of April, A. D., 1913, is erroneous and unjust to plaintiff, Appellant herein:—

Because the court in rendering said decree committed the following errors:—

81 1. The court erred in sustaining the decree of the District Court overruling the special demurrer of Appellant, defendant in that court, which demurrer was thus stated:

"Third. That said bill of complaint fails to set forth and allege that the same has been brought or authorized to be brought by due and lawful authority of the United States the alleged complainant therein":—

And further erred in not reversing the decree of the District Court and remanding the cause to that court with the direction to dismiss the same; And this because there was no evidence before said court that the United States had ever, with its own consent been impleaded therein as a complainant in Equity, and the Bill did not aver, or in anyway disclose the fact that it was brought by the Attorney General of the United States, or by his authority:

2. The court erred in not reversing the Decree against Appellant in the District Court rendered on the 26th April, 1912, sustaining the action of said District Court of November 24, 1906, in overruling the demurrer of this Appellant to the effect that the original contract between Appellant and United States authorized by and growing out of the Homestead laws of the United States, had been, with the consent of the United States and Appellant, commuted to the ordinary contract of sale of land for a price, in money or its equivalent, and that the said United States had not before filing its Bill to annul said contract and recover the land so sold, and has not since, tendered to Appellant or offered to refund to him the price paid by him and accepted by complainant as the equivalent of the land sued for.

3. The court erred in sustaining the judgment of the District Court which had overruled said Demurrer of this Appellant to the effect that the Bill itself had stated affirmatively that the competent officers of the United States, to-wit, the Register & Receiver of their land office, had "duly issued the certificates of entry
82 No. 148 and 149"; which the Bill alleged the patents had issued to enforce, to this Appellant, for the land which this suit was brought to recover:

4. That the court erred in not reversing the Decree of the District court against Appellant of April 26, 1912, on the ground that the Bill admitted and charged that Appellant had sold the land, entered by him as a homestead, after he had made final proof and received the final certificates Nos. 148 and 149, to James L. Bradford for the "ostensible consideration of Eight hundred dollars," which was an averment by the United States that this Appellant had in good faith conveyed all the land described in the Bill long prior to the filing thereof.

5. The court erred in not reversing the Decree against Appellant rendered by the District court April 26, 1912, and in not remanding the cause to said District court with an order of dismissal; And this, on the ground that the Bill showed on its face that the only allegation of falsehood and fraud in the final proof of Appellant was that he had

"produced certain witnesses to swear that he had not mortgaged, sold, or contracted to sell any portion of his said Homestead land," while a certified copy of the final proof itself, produced on the trial, showed that neither of the said witnesses had made any such oath or given any such testimony: And this was the only proof on the subject, for or against:

6. The court erred in affirming the judgment of the District court with respect to the tract of 40 acres, being the N. E. ¼ of the N. W. ¼ of said Section 33, etc., which the answer alleged, and the proof established had been sold and conveyed in good faith for the price of $800 to Richard M. Johnson on the 30 November, 1903, and that said Johnson had taken possession and was cultivating and improving the same nearly a year before the Bill was filed,
83 the said Johnson not being made a party defendant, nor the transfer to him denied by the government, but on the contrary admitted to be valid and binding by letter from the U. S. Attorney to said Johnson, of November 6, 1907.

7. The court erred in affirming the judgment of the District Court with respect to the tract of 38.02 acres being designated as the S. E. ¼ of S. W. ¼, or lot 2 of section 33, etc., which the answer alleged had been sold and conveyed by J. L. Bradford, one of the defendants to Daniel G. Jones, for the price of $760 by act of February 12, 1903, represented by promissory notes secured by mortgage on the land sold, which the Vendee being unable to pay, he sold and conveyed said land to said Bradford by Notarial act May 10, 1905, duly recorded in the local records, said Bradford surrendering said notes and accrued interest to said Jones as the consideration of the transfer, the Bill of complaint having been filed July 26, 1904, and the said Jones not being a party defendant:

8. The court erred in its judgment affirming that of the District court rendered April 26, 1912, against Appellant. And this, because the evidence before the District court under the rule established in the leading Maxwell decision of the Supreme Court, reported in 121 U. S., 381, utterly failed to show any fraud in the inception of the homestead entry of this Appellant clearly impeaching the U. S. Patents issued to this Appellant.

Wherefore Appellant prays that the said decree of the Circuit Court of Appeals rendered against him April 12, 1913, be reversed, and the cause be remanded to said court with directions to dismiss the Bill in the District Court.

(Signed) T. M. MILLER,
Solicitor for Appellant-Petitioner.
J. L. BRADFORD,
Solicitor for Appellant.

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Appeal Bond.

Filed April 10th, 1914.

Know all men by these presents, That we, Powhatan E. Causey, as principal, and Calhoun Fluker, as surety, are held and firmly bound unto United States of America, in the full and just sum of Three hundred dollars, to be paid to the said United States of America or their certain attorneys, executors, administrators or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this tenth day of April in the year of our Lord, one thousand nine hundred and fourteen.

Whereas, lately at a Session of the United States Circuit Court of Appeals, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Court, between Powhatan E. Causey and United States of America, being No. 2420, in Equity, a Decree was rendered against the said Powhatan E. Causey, on April 12, 1913, and the said Powhatan E. Causey, having obtained an order of appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the Decree in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing them to be and appear before the Supreme Court of the United States, to be holden at Washington, D. C., within 60 days from the date thereof.

Now, the condition of the above obligation is such, that if the said Powhatan E. Causey shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) P. E. CAUSEY. [SEAL.]
J. L. BRADFORD, *Attorney*, [SEAL.]
Per T. M. MILLER, *Attorney*
CALHOUN FLUKER. [SEAL.]

Sealed and delivered in presence of—
(Signed) WM. H. WRIGHT.
C. B. McMANUS.

85 Approved by:
(Signed) DON A PARDEE,
Circuit Judge.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, ss:

Personally appeared, Calhoun Fluker, who being duly sworn, deposes and says that he is the surety on the within bond, that he resides in the City of New Orleans, La., and is worth the full sum

of Three hundred Dollars, over and above all his debts and liabilities and property exempt from execution.

(Signed) CALHOUN FLUKER.

Subscribed and sworn before me this 10th day of April, 1914.

[SEAL.] (Signed) HY. J. LOISEL,
Deputy Clerk U. S. District Court.

Præcipe of Appellant for Record.

Filed April 25th, 1914.

In the U. S. Circuit Court of Appeals for the Fifth Circuit and Eastern District of Louisiana, New Orleans Division.

No. 2420. In Equity.

P. E. CAUSEY, Appellant,
vs.
UNITED STATES, Appellee.

To the Clerk of said Court:

The undersigned counsel for Appellant, who has appealed to the Supreme Court of the United States from the Decree rendered on April 12, 1913, requests that in making up the Transcript of the Record of Appeal to be transmitted to the U. S. Supreme Court, you will include the following, only:

1. The original Bill of Complaint filed July 26, 1904, in Bill in Equity U. S. vs. J. L. Bradford, et als. No. 13257, U. S. Circuit court, E. D. La., N. O. Div.

2. Demurrer of P. E. Causey in above case filed Nov. 17, 1904.

3. Judgment overruling Demurrer of P. E. Causey filed April 30, 1906.

4. Memorandum of reasons for overruling Demurrers in various Bills in Equity; among them the Bill against P. E. Causey, No. 13257, filed April 30, 1906.

5. Answer of P. E. Causey to Bill of Complaint filed June 4, 1906.

86 6. General Replication filed June 8, 1906.

7. Order of Circuit Judge Nov. 10, 1906, appointing Victor Leovy, Special Master to take testimony in No. 13257.

8. Report of Special Master Leovy in P. E. Causey case, No. 13257, filed in Circuit Court March 18, 1911, omitting the following parts relating to other cases than the case of P. E. Causey, to-wit:

Omitting all on pp. 1, 2 & 3, down to & inclusive of the ninth line on P. 3, which line ends with "and I adopt the same as my findings of fact herein."

9. Exceptions of P. E. Causey to Report of Special Master filed Apl. 12, 1911.

10. Printed abstract of testimony in form of brief, prepared for use of Court of Appeals in Appeals before that court in cases of

Mattie L. Webb & P. E. Causey, dated Feby. 28, 1913, excepting therefrom the following parts relating to other cases than that of P. E. Causey; which excepted parts are designated by red lines drawn over the same on the duplicate copy of said printed abstract.

11. The Decree in this cause of U. S. vs. P. E. Causey by the Circuit Court of Appeals filed April 12, 1913, in favor of the U. S. and against the Appellant P. E. Causey.

12. Petition of P. E. Causey for Appeal to Supreme Court of the U. S., filed March 31, 1914, with Affidavit as to value of property in dispute, with Order for Appeal dated Apl. 1, 1914, by Don A. Pardee, Circuit Judge.

13. Bond for Appeal filed Apl. 10, 1914.

14. Assignment of Errors in No. 2420 by P. E. Causey, Appellant, filed Apl. 1, 1914.

15. Citation served on U. S. Attorney & Approved & filed April 13, 1914. Citation signed Apl. 11, by Don A. Pardee, U. S. Circuit Judge.

87 16. Affidavit, dated March 30, 1914, showing value of land in controversy.

17. Exhibits X 1, 2, and 3, being the unsigned forms of supposed contracts between Wm. H. Wright and prospective entrymen.

18. Affidavit & statement of P. E. Causey of July 15, 1912, filed July 17, 1912, claiming the privilege of defending suit & prosecuting Appeal under the benefit of the pauper act of June 25, 1910.

We make this request under the provisions of No. 75, of the new rules of practice for the courts of equity of November 4, 1912, and state in conclusion that on this day, April 24, 1914, we have furnished the U. S. District Attorney a copy of this præcipe. We are,

Very respectfully,

(Signed) T. M. & J. D. MILLER,
Solicitors for Appellant.
J. L. BRADFORD,
For Appellant.

P. S.—We add the following:

19. Testimony of Joseph D. Lodwick & John C. Harris, as part of the final proof of P. E. Causey, made before the Clerk of Court at Donaldsonville, La., on March 19, 1900.

(Signed) T. M. & J. D. MILLER,
J. L. BRADFORD,
For Appellant.

Supplemental Præcipe of Appellant.

Filed May 26th, 1914.

502 Interstate Bank Building.

NEW ORLEANS, LA., May 26, 1914.

88 No. 2420. In Equity.

P. E. CAUSEY, Appellant,
vs.
UNITED STATES, Appellee.

Hon. Frank H. Mortimer, Clerk U. S. Circuit Court of Appeals.

SIR: In our præcipe to you in the above cause, of April 24, 1914, we set forth under 19 heads, testimony we desired to be copied into the Transcript of Appeal, and in order to abbreviate the Transcript in several matters, we now instruct you as follows:

Under the No. 4, you will omit the "memorandum of reasons for overruling Demurrers," as we have not been able to find the same:

Under the No. 8 we asked you to send up the report of Special Master, omitting all on page- 1, 2 and 3, etc., as the United States object to this abbreviation, we withdraw the request and you can send up the entire Report:

Under the No. 10, you can omit the entire printed abstract therein referred to:

Under the No. 18, you may omit the Affidavit and statement of P. E. Causey therein referred to.

We have this day furnished to Counsel for the Government, the Hon. Walter Guion, a copy of this communication.

Very respectfully,
(Signed) J. L. BRADFORD,
Of Counsel for Pl'ff.
T. M. MILLER,
Counsel for Pl'ff.

89 *Præcipe of Appellee for Record.*

Filed May 4, 1914.

In the United States Circuit Court of Appeals for the 5th Circuit, Eastern District of Louisiana, New Orleans Division.

No. 2420. In Equity.

POWHATTAN E. CAUSEY, Appellant,
vs.
UNITED STATES, Appellee.

To the Clerk of said Court:

The undersigned United States Attorney for the Eastern District of Louisiana, representing and appearing herein for Appellee in the

above numbered and entitled cause which has been appealed to the Supreme Court of the United States from the decree rendered on April 12, 1913, requests that, in making up the transcript of the record of appeal to be transmitted to the Supreme Court of the United States, you will include in and incorporate into the transcript of appeal the following additional portions of the record in that suit.

1st. Consent of James L. Bradford that a decree be entered, filed October 18, 1907.

2nd. Judgment in favor of United States of America and against James L. Bradford, entered and filed October 18, 1907.

3rd. Motion and order amending decree, filed March 4, 1910.

4th. Entire report of Special Master Victor Leovy in case number 13,257, including pages 1, 2 and 3.

5th. Extract from the minutes of the United States District Court for the Eastern District of Louisiana showing hearing on exceptions to Master's report and overruling of objections thereto, dated April 18, 1912.

6th. Decree of United States District Court in favor of the United States of America and against Powhattan E. Causey, filed April 26, 1912.

90 7th. Testimony of L. H. Maisenbacher taken on behalf of United States before Victor Leovy, Master, in the case of United States vs. James L. Bradford and William H. Wright, No. 13,255 of the docket of the United States Circuit Court, Eastern District of Louisiana, New Orleans Division and in the suit of United States vs. Powhattan E. Causey, No. 13,257 and filed April 18, 1912.

8th. Testimony of James Tanner taken before Victor Leovy, Master, in the case of United States vs. James L. Bradford and William H. Wright, No. 13255 of the docket of the United States Circuit Court, Eastern District of Louisiana, New Orleans Division and in the suit of United States vs. Powhattan E. Causey, No. 13,257 and filed April 18, 1912.

9th. Testimony of J. D. Lodwick taken before Victor Leovy, Master, in the case of United States vs. James L. Bradford and William H. Wright, No. 13255 of the docket of the United States Circuit Court, Eastern District of Louisiana, New Orleans Division and in the suit of United States vs. Powhattan E. Causey, No. 13,257 and filed April 18, 1912.

10th. Testimony of Henry Nickens taken before Victor Leovy, Master, in the case of United States vs. James L. Bradford and William H. Wright, No. 13255 of the docket of the United States Circuit Court, Eastern District of Louisiana, New Orleans Division and in the suit of United States vs. Powhattan E. Causey, No. 13,257 and filed April 18, 1912.

11th. Testimony of Byrd McCrory taken before Victor Leovy, Master, in the case of United States vs. James L. Bradford and William H. Wright, No. 13255 of the docket of the United States Circuit Court, Eastern District of Louisiana, New Orleans Division and in the suit of United States vs. Powhattan E. Causey, No. 13,257 and filed April 18, 1912.

91 12th. Agreement as to testimony taken in the suits of the United States vs. Mattie L. Webb (now Keifer) et als., No. 13255 and United States vs. Powhattan E. Causey et als., No. 13257, filed July 17, 1912.

This request is made under the provisions of Equity Rule No. 75 of the new rules of practice for the Courts of Equity of November 4, 1912 and I beg to state, in conclusion, that I have on this day, the 4th day of May 1914, furnished a copy of this præcipe to Messrs. T. M. & J. D. Miller, Solicitors for Appellant.

Yours respectfully,

(Signed) WALTER GUION,
United States Attorney, Solicitor for Appellee.

Order Extending Return Day.

Filed May 15th, 1914.

In the United States Circuit Court of Appeals, Fifth Circuit.

Number 2420.

POWHATAN E. CAUSEY, Appellant,
versus
UNITED STATES, Appellee.

Clerk's Office.

I hereby certify that, owing to the fact that definite instructions have not been given me in reference to the transcript of the record in the above entitled and numbered cause, and counsel for the parties have not yet come to an agreement as to said transcript, it
92 will not be possible to have the same ready for the return day thereof in the United States Supreme Court, to-wit: May 30th, 1914.

Witness my hand and seal, this 9th day of May, A. D. 1914.

(Signed) FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals, Fifth Circuit.

Extension granted for forty five days from May 30th, 1914.

(Signed) DON A. PARDEE,
Circuit Judge.

Clerk's Certificate.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the U. S. Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the foregoing 92 pages contain full, true, and complete copies of such portions of the record, and of the proceedings in said United States Circuit Court of Appeals, incorporated into the transcript of appeal to the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals, numbered 2420, Powhatan E. Causey, Appellant, vs. The United States of America, Appellee, made up in conformity to the præcipe of the parties thereto.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 25th day of June, A. D. 1914.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals, Fifth Circuit.

93 THE UNITED STATES OF AMERICA:

The President of the United States to United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within 50 days from the date hereof, pursuant to an appeal and order of appeal sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, on the 1st — April, 1914, in the cause wherein Powhatan E. Causey is Appellant in the United States Circuit Court of Appeals in and for the Fifth Circuit in the Eastern District of Louisiana, New Orleans Division, and United States are Appellees, No. 2420, in Equity, to show cause, if any there be, why the Decree rendered against the said Causey on April 12, 1913 and in said order of Appeal & Appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, this 11th day of April in the year of our Lord one thousand nine hundred and fourteen.

DON A. PARDEE,
United States Circuit Judge.

94 [Endorsed:] Return 13257. No. 2420. United States Circuit Court of Appeals, Fifth Circuit. Powhatan E. Causey, appellant vs. The United States of America, appellee. Citation. U. S. Circuit Court of Appeals. Filed Apr. 13, 1914. Frank H. Mortimer, clerk.

Received by U. S. Marshal, New Orleans, La., Apl. 13, '14. And on the same day month and year I served copy hereof on the United States of America by handing the same to Hon. Walter Guion, U. S. Attorney for the Eastern District of Louisiana, in person, in the City of New Orleans, Louisiana.

VICTOR LOISEL,
U. S. Marshal.
By E. M. KEINLER,
Deputy U. S. Marshal.

Endorsed on cover: File No. 24,302. U. S. Circuit Court Appeals, 5th Circuit. Term No. 197. Powhatan E. Causey, appellant, vs. The United States. Filed July 8, 1914. File No. 24,302.

FILED
JAN 31 1916
JAMES D. MAHER
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

No. 197.

POWHATAN E. CAUSEY,

Appellant,

vs.

THE UNITED STATES,

Appellee.

Appeal from the United States Circuit Court of Appeals for the Fifth Circuit; Filed July 8, 1914 (24,302).

BRIEF AND ARGUMENT FOR APPELLANT.

T. MARSHAL MILLER,
Attorney for Appellant Causey.
NEW ORLEANS, LA., January 18, 1916.

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BRIEF AND ARGUMENT FOR APPELLANT.

STATEMENT OF THE CASE.

This is a proceeding in equity originally *brought by the United States* (*so claimed*) in the Circuit Court of the United States for the Eastern District of Louisiana, Fifth

Circuit. The bill having been filed July 26, 1904, by H. Generes Dufour, as assistant United States Attorney, against James L. Bradford, Powhatan E. Causey and Wm. H. Wright. It was charged that Causey had made a homestead entry on March 19, 1900, for public lands in the Parish of Ascension, La., and on August 21, 1901, had made his final proof of settlement and cultivation under the homestead law and had paid for his lands, amounting to $157.77 acres, by locating and surrendering, in payment, two Supreme Court scrip certificates of location Y12 and Y13, and had received from the Register and Receiver of the United States land office at New Orleans, La., certificates of entry 148 and 149, respectively, which the bill declared the Register and Receiver had *duly* issued to him. And that thereafter—to-wit, February 28, 1902, a patent was issued by the United States to the said Causey for said land. (Two patents had in fact issued, one being for about half the land, or 80 acres, by specific description, and the other being for about 80 acres by specific description, and both amounting to 157.77 acres, and being all Causey had originally entered. The bill then set forth that Causey, on August 23, 1901, *transferred* his land to James L. Bradford, "for the ostensible consideration of $800," by recorded title, and that on the next day, August 24th, Causey and Bradford had entered into an agreement by which Causey was to be allowed to redeem half of the land by repayment to Bradford of $750 in three installments at stated times, on condition that the failure to pay any installment when due should operate a forfeiture of the right to redeem. The bill then charged that the entryman had, on making his entry, taken the usual oath that he was in good faith, and that the entry was for himself alone, and not for the benefit

of any other person, and not for speculation; and that he had not made any contract in any way by which the title he expected to get from the government should inure to the benefit of any person but himself, etc.; "which declarations," the bill declared, "were false and fraudulent, and well known at the time they were made to be so, not only to Causey, but by William H. Wright and by J. L. Bradford, who acted for him in the Land Office and as his attorney"; the bill adding that the said entry was made by Causey "for the benefit of said Wright and Bradford," etc.

The bill then charges that Wright and Bradford persuaded various persons, including Causey, to make homestead entries, with the understanding that "upon perfecting the said entries and receiving their patents they would transfer to Bradford and Wright half the lands so patented, or all the lands so patented, with the pretended right to redeem half of said lands, the said Wright and Bradford to pay the expenses."

The bill then charges that Causey, on July 3, 1901, made his final proof for the purpose of obtaining a patent, and at that time produced "certain witnesses to swear that he had not mortgaged, sold or contracted to sell any portion of his homestead; the said final proof being false and fraudulent, as he (said Causey) and the said Bradford and the said Wright then and there well knew, the said Powhatan E. Causey having agreed, as aforesaid, to convey all or a portion of said lands to the said Bradford and the said Wright," etc.

It is then charged that the entry made pursuant to said fraudulent agreement was null and void, and the patent illegally obtained, because he did not comply with the homestead laws in *perfecting* his entry, and that "said en-

try was made *and perfected* in violation of law." That the patent should be canceled and annulled, the transfer made by Causey to Bradford should be canceled and set aside and the said land restored to the complainant.

This bill appears on pages 1, 3 and 4 of the transcript of the record. It will be observed that there is no allegation that the bill to vacate and annul a U. S. patent for land was brought by the Attorney General of the United States, or by his direction or supervision. The prelude to the bill being (Record, p. 1): "The United States of America, through H. Generes Dufour, assistant U. S. attorney, brings this bill of complaint against Powhatan E. Causey," etc., concluding thus: "And your orator will ever so pray. Signed, H. Generes Dufour, Assistant U. S. Attorney."

Thereupon Mr. Causey filed his demurrer, alleging three grounds for same, the third being thus expressed:

> "Third. That said bill of complaint fails to set forth and allege that the same has been brought or authorized to be brought by due and lawful authority of the United States, the alleged complainant therein."

Which was overruled, April 30, 1906, and no step was taken by the young assistant attorney to show that he was authorized by law to implead the government. As a consequence the defendant Causey defended the case and is defending under protest, not believing that the government was ever lawfully a complainant in equity.

William H. Wright filed a disclaimer and was eliminated as a defendant. About the time the bill was filed against Causey, Bradford and Wright, the government brought six other separate bills, each one against the same

parties, to cancel homestead patents for lands in the same neighborhood, Bradford having invested largely in the purchase of the lands, and in improvement of the same, the moving spirit in all of them being the enmity of certain subordinate officers of the land department, especially the local agents in Louisiana sent out by the General Land Office for detection and suppression of illegal entries upon the public lands. The animus of the war was entirely against Bradford and only him. These civil suits, all against Bradford, and in the same court, at the same time, resulted from a conspiracy to oppress and rob him, among his enemies in the land department, and in part to make business in the United States courts, to make a show of virtuous activity among the special agents and other subordinate officers of the land service. The enthusiasm engendered by this war extending from the spring of 1904, caught up and illuminated the young enthusiast, Mr. Dufour, who happened at the time to be an assistant to the United States Attorney at New Orleans, and resulted in the general attacks referred to.

Early in the year 1907 the testimony of eighteen witnesses was taken before a master at Donaldsonville, near the lands in question, in the seven bills then pending, each bill against a separate homestead entryman, and Bradford and Wright. It was on the whole so damaging to the government that the Special Master wisely and prudently failed to return it into court until long after it could be of any avail to Bradford, to-wit, March 18, 1911.

P. E. Causey, June 4, 1906, filed his answer (R., 7 to 13), which is very full and complete, dealing with the bill by paragraphs, the greater part of which was surplusage and irreleavn.

It is an emphatic denial of every material allegation of the bill, a denial of all fraud and irregular practices.

In conclusion, under paragraph six, the answer charges the United States has never repaid or offered to repay him the money he paid when he made his entry, and denies that the government has ever refunded or offered to refund to him in negotiable form, or in any manner whatsoever, the land scrip given in payment for the land when he made his commutation entry.

ASSIGNMENTS OF ERROR.

ASSIGNMENT No. 1.

This assignment brings up for review the action of the Court in entertaining the bill in the United States Court of Equity to impeach a United States patent to public lands regularly and deliberately issued by the President of the United States in the absence of any allegation whatsoever that the Attorney General of the United States, the chief law officer of the government, brought the suit, or authorized it to be brought. The objection in the court of original jurisdiction was regularly and timely taken in conformity with the practice in equity, and it must be assumed if there was any case for presumptions, that the objection could not be overcome, and that, therefore, it is self-evident that the young District Attorney acted on his own initiative, and sought to use the extraordnary powers of an equity court without any authority of law. Thus, a subordinate officer of the United States judiciary department sought to impeach and hold for naught, without any authority, the highest and most solemn action of the executive department of the United States Government. The

Constitution declares that powers and jurisdictions of these two great departments shall be co-ordinate. There can be no question of the law in this case. The young man has simply made a mistake. Will the Court sanction such wild practice by affirming the decree in this case?, or vindicate the dignity and supremacy of the Attorney General in his great department of government, by maintaining the precedents and the customary and orderly method of procedure? We appeal to the *Throckmorton case*. It seems to be the leading authority in our favor; 98 U. S. 61. That was a bill in Equity brought in the Circuit Court for the District of California, to set aside a Mexican Grant, confirmed by a board of commissioners, and the decree of the United States District Court affirming the confirmation. The general charge was that both confirmation and decree had been obtained by fraud. As said by the Court (p. 62):

> "The bill is brought by Walter VanDyke, U. S. Attorney, on behalf of the United States against Throckmorton, Howard, Gould and Haggin."

After stating many reasons against the bill the Court (p. 70) declared:

> "There is another objection to the bill, which, though not going to the merits, is, in our opinion, equally fatal to it in its present shape.
>
> "We are of opinion that, unless by virtue of an act of Congress, no one but the Attorney General, or some one authorized to use his name, can bring a suit to set aside a patent issued by the United States, or a judgment rendered in its courts on which such a patent is founded. That is the case before us, and we see nothing in the bill to indicate to the court that it ever received the sanction of the Attorney General, or was brought by his direction. The alle-

> gation already cited implies that Mr. Van Dyke, the District Attorney, is the complainant; but if, construing it liberally, we hold that the United States is the complainant, the statement is clear that the bill was brought by the District Attorney, and not by the Attorney General. * * * * * In the class of cases to which this belongs, however, the practice of the English and the American courts has been to require the name of the Attorney General as endorsing the suit before it will be entertained. The reason of this is obvious, viz., that in so important a matter as impeaching the grants of the government under its seal, its highest law officer should be consulted, and should give the support of his name and authority for the suit. * * * * * It would be a very dangerous doctrine, one threatening the title to millions of acres of land held by patent from the government, if any man who has a grudge or a claim against his neighbor can, by indemnifying the government for costs, and furnishing the needed stimulus to a district attorney, to institute a suit in Chancery in the United States Court to declare the patent void. *It is essential, therefore,* to such a suit, that without special regard to form, but in some way which the court can recognize, *it should appear* that the Attorney General has brought it himself, or given such order for its institution as will make him officially responsible for it, and show his control of the cause."

The suggestion that the practice we declaim against of allowing anyone to furnish "the needed stimulus to a district attorney" as a dangerous one, seems to have found an echo in the seven bills in Equity heretofore referred to, all brought at the same time, in the same court against one and the same defendant. And the great number of mistakes made in the hurry and excitement of the war show for cer-

tain that the Attorney General had nothing to do with it. We, perhaps, have no right to refer to these mistakes, except in the instant case, the bills nor the records in the other six cases not being before the Court.

As an illustration:

In the second clause of the bill it is admitted that Causey commuted his etnry to cash, made payment for his land, and that "the Register and Receiver of the United States Land Office in New Orleans *duly* issued certificates of entry Nos. 148 and 149, and thereafter the United States issued the patent," etc.

Again, in the third clause it is admitted that Causey, long before the bill was filed, had *transferred* his land to Bradford "for the *ostensible consideration of $800.*"

In the fifth clause of the bill it is charged that Causey induced his witnesses in making his final proof to swear that he "had not mortgaged, sold, or contracted to sell any portion of his homestead." The proof being false and so known to be by Bradford, Wright and Causey; but the production of the proof itself showed that neither witness had so testified!

The bill, in clauses second and sixth, describes *one* patent and asked its annullment, whereas there were *two* patents issued, and the question was which one of the two, (for each was for about 80 acres), the pleader objected to.

The rule in the *Throckmorton case* was before the Court in *McLoughlin vs. United States*, 107 U. S. 526, the Court saying:

> "The appellant assigned for error two grounds, one being that 'there is no sufficient evidence that the suit was instituted under the authority of the Attorney General,' according to the *principle estab-*

> *lished* in *United States vs. Throckmorton*, 98 U. S. 61. To this it may be answered that the objection was not raised below, as it was in *that* case, and it declined to reverse the decree because the objection was not taken below, but 'taken here for the first time,' that is, in the Supreme Court."

In *West Pac. R. R. Co. et al., vs. United States*, another case from California, 108 U. S. 510, to cancel a land patent as "issued by mistake and without authority of law." This is evidently a repetition of the opinion and decision in the preceding case of *Mcloughlin*, cited from 107 U. S. 526, and seems to have been published by the Reporter in Vol. 108 by mistake.

The next case seems to have been also from California, and is *Mullen et al. vs. United States*, 118 U. S. 271, in which it was sought by Mullen to induce the Judiciary Department to proceed in equity in the Federal courts to vacate, not another United States *patent* for lands, but a *"listing"* of coal lands in favor of the State of California. The only patents involved were State patents issued in pursuance of the Federal selections. The judgment of the Supreme Court, therefore, does not involve the rule in the *Throckmorton case*, referred to in the *McLoughlin case* as *established* in the *Throckmorton case*. The error of the reporter in reporting the two cases in Vol. 107, 528 and 108, page 510, as two different cases, led the Court (p. 278) into the error of citing them *as reported*, whereas there was but one case, and that so badly reported that the Court was tempted to dismiss it.

In *United States vs. San Jacinto Tin Company*, 125 U. S. 273, the Court passed on the broad question whether or not the Attorney General had the *inherent general author-*

ity, in a case where the Government had a clear interest in the property, to bring a bill in equity in a Federal court in behalf of the Government to set aside and annul a land patent which had been issued by mistake, or as the result of fraud. Said the Court (p. 284):

> "We are not insensible to the enormous power and its capacity for evil thus reposed in that department of the Government."

It was said:

> "We do not think, therefore, that it can be successfully denied that there exists in the Attorney General, as the head of the Department of Justice, the right to institute in the name of the United States a suit to abrogate or annul or set aside a patent for land which has been issued by the Government in a case where an instrument, if permitted to stand, would work serious injury to the United States and prejudice its interests and where it had been obtained by fraud, imposture or mistake."

And we call especial attention to what the Court there said, in conclusion:

> "One of the difficulties attending the present case and others of like character which have come before us, in which the authority of the Attorney General to institute the suit has been questioned, is, that no specific plea has been filed denying this authority, or alleging that the suit, as made by the bill, or established by the evidence, does not come within the class of cases in which that officer can exercise this power."

Even this general authority of the Attorney General thus sustained by the Court, seems to have been opposed by Justice Field, who said (p. 306):

> "I cannot assent to the position announced in the opinion of the Court (p. 284) that the Attorney General has unlimited authority by virtue of his office to institute suits to set aside patents issued by the Government. He is the head of the Department of Justice, and as such is charged with the superintendence and direction of all District Attorneys of the United States, and generally all litigation in which the United States are interested. * * * The legislation of Congress points out the infinite variety of cases where legal proceedings may be taken in behalf of the United States in the enforcement of their rights, the protection of their property and the punishment of offenses, and wherever no authority is conferred by statute, express or implied for the institution of suits, none in my judgment exists."

And the Justice concluded by saying:

> "I can never assent to the position that there exists in any officer of the Government a power so liable to abuse and so dangerous in the case of many communities."

In all these remarks by Justice Field it is evident that he was exceedingly jealous of the free exercise of power in officers of the Judiciary Department to lightly imperil titles held under United States land patents fairly and intentionally issued under all the guarantys and according to the forms and regulations of the Federal authority.

Assignment No. 2.

This assignment raises the interesting point as to the legal effect of a commutation, or novation, by a homestead entryman under the homestead laws, who makes satisfactory proof under all the forms and requirements of the law, and is permitted by the competent officers of the Government to make full and regular payment for his land, with the fees and commissions of the land officers, and who receives from them the usual equitable titles from those officers; and where, long afterwards, the Government repudiates and disavows the transaction and sues to recover the lands without repaying the price it has received, or offering to do so.

The rules of equity, as practiced in United States courts, exist independent of congressional action and of the regulations of the Land Department; and the question is, can the United States, as a dealer in lands, sell and convey its lands to the citizen and afterwards repudiate the sale and be permitted to retain in its treasury the money it has received and recover the lands also.

Assignments Nos. 3 and 4.

These assignments raise the question as to the effect of the allegation in the bill that the homestead entryman made final proof to the satisfaction of the competent officers of the Government, who had "duly issued to him," as a consequence, the equitable title; to wit, "Final Certificates 148 and 149," upon which he had "sold the land entered by him as a homestead *"for the ostensible consideration of $800."* And all this long prior to the filing of the bill. What is an *"ostensible consideration"?* The law distinguishes between

a "good consideration" and a "valuable consideration." Is there any cabalistic meaning in the adjective "ostensible" as here used? Could the pleader have said in plainer words that, long before the bill was filed, the homestead entryman had for a cash price acceptable to himself sold his land while in possession under a United States patent?

Assignment No. 5.

The only plain charge of fraud in the bill which was well pleaded, and such as could have been made the basis of proof one way or the other, was the one relating to the final proof submitted by Causey to the Register and Receiver, which was satisfactory to them and on which they issued their Final Certificates 148 and 149. The charge was that on "the third day of July, 1901, the said Powhatan E. Causey made final proof for the purpose of obtaining a patent for said land, and at that time produced certain witnesses to swear that he, said Powhatan E. Causey," had not mortgaged, sold or contracted to sell any portion of said homestead; "the said final proof being false and fraudulent, as he, said Causey, Bradford and Wright then and there well knew,"—the said Causey having agreed, as aforesaid, to convey all or a portion of said lands, etc. This pleading has clear reference to the provision of the homestead law forbidding alienations of the homestead land prior to acquisition of full title. The pleader evidently knew but little of the facts of his case, for it turned out that the two witnesses, Joseph D. Lodwick and John C. Harris, had *not* so testified, and Causey's answer so stated. (Rec., p. 12.) The final proof appears in the record (pp. 49, 51). Lodwick was asked:

Q. 11. Has the claimant mortgaged, sold or contracted to sell any portion of said homestead?
A. Not that I know of.

To the same question, Harris answered:

"Not to my knowledge."

We think the bill may be read very critically, for any other issueable *facts*, charged as frauds against this homesteader Causey. The bill is full of very general charges, but they are mostly indefinite, immaterial and tender issues of law and not of fact. Could the Attorney General have drawn up such a bill?

Assignment No. 6.

This assignment tenders an issue in law that can have but one answer. Richard M. Johnson was not a party defendant. He had purchased for the price of $800 on November 30, 1903, long before the bill was filed, forty acres of the land; had built upon, and was living on it as the home of himself and family nearly a year before the bill was filed, the land being the northeast quarter of the northwest quarter of Section 33, etc. And he was not made a party defendant. He bought from one holding under the patent, which was then unassailed and was presumably valid. On November 6, 1907, the United States District Attorney at New Orleans (who was a lawyer), wrote Mr. Johnson admitting his title to be valid and binding on the United States.

Assignment No. 7.

Before the filing of the bill, which was July 26, 1904, Bradford, one of the defendants, had by act of sale of Febru-

ary 12, 1903, conveyed to one Jones for the price of $760, thirty-eight acres of the land, who went into possession, cultivating and making it his home. Jones was not made a party defendant. The question is, could the Government divest the title of Jones without making him a party defendant?

Assignment No. 8.

This assignment claims a reversal of the judgment annulling the patent or patents issued to Causey on the general ground that the evidence fell far short of the clear and satisfactory proof required in the leading case (*Maxwell*, 121 U. S. 381), when a court of equity is asked to annul a patent for lands issued by the competent officers of the United States.

If the Court applies to this case the rule of evidence announced in this leading case, we are very confident that it will hold that the suit must be dismissed. The strong language used by the Court in that case seems to have carried with it a side wind, and a pretty strong one too, to control the officers of the Government, and the courts as well, in future suits to set aside patents regularly and advisedly issued by the Government; especially where the parties had for a long time held, possessed and cultivated the land as private property. We will make but one quotation from the opinion of the Court:

> "We take the general doctrine to be that when, in a court of equity it is proposed to set aside, to annul or to correct a written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal and convincing, and it cannot be done upon

a bare preponderance of evidence which leaves the issue in doubt. If the proposition, as thus laid down in the cases cited, is sound in regard to the ordinary contracts of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents and other solemn evidences of title emanating from the Government of the United States under its official seal. In this class of cases the respect due to a patent, the presumptions that all the preceding steps required by the law had been observed before its issue, the immense importance and necessity of the stability of ittles dependent upon these official instruments, demand that the effort to set them aside, to annul the mor to correct mistakes in them, should only be successful when the allegations on which this is attempted are clearly stated and fully sustained by proof. It is not to be admitted that the titles by which so much property in this country and so many rights are held, purporting to emanate from the authoritative action of the officers of the Government, and, as in this case, under the seal and signature of the President of the United States himself, shall be dependent upon the hazard at successful resistance to the whims and caprices of every person who chooses to attack them in a court of justice; *but it should be well understood that only that class of evidence which commands respect, and that amount of it which produces conviction, shall make such an attempt successful.*"

This language, eminently just and merciful when applied to patents issued under the commutation provisions of the homestead law. They are issued under regulations and restrictions of the Land Department so minute, so searching and almost illiberal, that no one can obtain his patent without the utmost difficulty. The Court can see a part of this stringency in the final proof regulations in

this case, under which Mr. Causey obtained his patents. (R., pp. 49, 51.) But that is only a part. The law required him to advertise in a local paper five consecutive weeks his intention to make his proof, stating time, place and witnesses, thus inviting opposition. Also to post a similar notice on the door of the Land Office. The Register and Receiver are then required to subject both entrymen and witnesses to a rigid examination, and to issue their final receipts and certificates with the utmost care, and the proceedings in the General Land Office in Washington. All were of the strictest sort, and it cannot be supposed for a mement that any illegal patent could pass unscathed through all this fire. The wonder rather is, that, in practice, the issuing officers could make any progress under such a system.

All this adds additional force to the general jealousy with which, in the *Maxwell case*, the Supreme Court viewed ill-advised attacks on United States land patents, deliberately issued under the great seal and recorded in the archives of the Government.

It must not be forgotten that there was no attack made on this patent for want of settlement, cultivation and improvement by Mr. Causey, the only charge being that there was fraud in the inception of the entry. The record is full of proof of long residence upon and improvement of the land by Causey, who had built upon it and made it so valuable, or at least eighty acres of it, that for three years he was able to rent it to a planter for $480 annually. (Rec., pp. 10 and 32.) He testified (Rec., p. 42) that he was offered $35 an acre for his land; that he would take $50, but didn't know if he would take $35.

If we examine even briefly the testimony of witnesses

for the Government in the court below, it will be found to be very weak; much of it is irrelevent. Take that, for instance, of L. H. Maisenbacher, under the head of "Statement of Evidence for Complainant." (Rec., p. 31.) He said he had made a homestead entry in Ascension Parish under an agreement he had made with a Mr. Cox, claiming *he* was an agent of Wm. H. Wright; that Wright and Cox were to put up all the money and bear all expenses, fees, etc., and he was to make final proof and homestead the land. That he made commutation proof, which Mr. Wright paid for, and was to give him title to one-half of the homestead. He was contested and lost his land. He relinquished it. Mr. P. E. Causey got him to relinquish it. Causey told him he had made an agreement to give one-half of his land to Mr. Wright.

On cross-examination, he said that he made an affidavit, which was not read to him, and he didn't read it. Didn't know what was in it, and he was not asked to read it! The only bearing this man's evidence had upon the Causey entry seems to be in the statement that Causey told him he had made an agreement to give onehalf his land to Wright.

James Taner, testifying for the Government (Rec., p. 32) says:

"I can't read to amount to anything."

His testimony has no sort of bearing upon the entry of P. E. Causey.

The next testimony for the Government was that of J. D. Lodwick. It has little or no bearing upon the homestead entry and patent of P. E. Causey. Its only possible connection it could have was the statement of Mr. Causey to him that he had received a communication from Capt.

Bradford that if he remained long on the land, he (Bradford) would expect him to pay rent. Also, that Causey told him that he had an agreement with "Capt. Bradford by which he was to give him one-half of *this* land." The witness didn't say what land he meant by *"this land."* Nor if the agreement was carried out. Nor when, or where, or under what circumstances the statement was made. But whatever the testimony was, it cannot be believed, because the Court can see from another part of the record that this man Lodwick admitted he was a perjurer, and was at the time engaged in a low conspiracy to get his land back from the Government and re-enter it as a homestead, after admitting that he had sold it to Bradford for a good price, and that he had received and spent the money! He was willing to swear, and did swear, anyway to please the Government officers and get their assistance in getting his land back and in defrauding his vendee, Bradford. He had testified for the Government (Rec., p. 33) that

> "the expenses of my entry were paid by Bob Cox, through Cap. Bradford."

Afterwards, on cross-examination (Rec., p. 35), he testified that he made that statement "because the said Cox told him that Bradford was the party." And he added:

> "I have been an educated man, a school teacher, and know how to read and write."

He stated he had made his application and affidavit for homestead entry before the clerk of court of Ascension Parish. He had testified (Rec., p. 33) that he had made an agreement with Bob Cox to give one-half of his land to Mr. Bradford and Mr. Wright. Afterwards (Rec., p. 35), when he read the usual homestead oath which he took when he

made his entry, and stating that he had read the affidavit and signed it, and had again read it and signed it five years later, when he made his final proof, he was asked by counsel:

> "How could you make those affidavits then and swear to the truth if you had made the contract which you testified you did."

He answered:

> "Simply because I was willing to believe that you were a man and a lawyer and knew precisely what you were doing, and those parties made their entries with you and were not then liable to anybody."

Mr. Bradford asked him:

> "Is that your answer:

He said:

> "Yes, sir, and that there was no fraud, that you would pay what the Government were exacting."

Adding:

> "I understood that from Mr. Wright and from Mr. Bob Cox. I did not understand it from Mr. Bradford."

Asked by counsel:

> "Would you take any oath on any subject that Mr. Bob Cox or Mr. Wm. H. Wright told you that it was right to take?"

He answered:

> "I would have done so at that time; yes, sir."

And he added:

> "I have sold my land and got the money for it and spent it. Have relinquished my title to the United States and have applied to re-enter the land if the Government will allow it. I have no hope at

all. To tell the truth, I don't think I have any right to accept anything from the Government. I think the Government is very lenient with me if I acknowledge what I have done to keep me from going to jail. I am stating facts whether I go to jail or not."

Asked by the Master:

"When did you make your application for your land, to get it back. How long ago?"

He answered:

"I made my final proof in 1902, I think it was in 1893! I had made my application to get my land back on the ground that it was a fraudulent entry. I was not afraid to do that, and had been told that the entry was fraudulent and the Government, if I would admit it as a fact, that I might possibly be exonerated and get my land back. I sold my land immediately after making final proof to Cap. Bradford, the deed was made to Mr. Fluker, Cap. Bradford not then being in town. The consideration which I had received being $400."

Asked by counsel:

"Ahe you able to refund any of that money that you got for the land in case your entry is cancelled?"

He answers:

"No, sir; I am not able to pay any part of it. I have not got anything. I don't own a horse. I don't own any land."

Asked by counsel:

"You hope to get your entry back?"

He answers:

"No, sir; I have no hope at all.

Asked:

"Ahe you trying to get it back?"

He answers:

> "I have not said anything to my attorney. I have not communicated with him. I don't know anything about it. I have not bothered with it. I tried to get it back, but know nothing about it for about the last twelve or fourteen months. My attorney is T. J. Hickman, living in New Orleans. I have not instructed him to withdraw my application and affidavit."

This fellow Lodwick is a fair sample of the Government's witnesses. What is the testimony of such a man worth?

Recurring now to the testimony of this man (R., 33) against Causey, if the Court should think it of any weight, it is suggested that as he practically admitted himself a perjurer and a swindler, on pp. 35 and 36, the question is, can the Court pay any attention to it?

We will now consider the Government's next witness, Henry Nickens, (R., 33), though it has no application to the Causey entry and patent. He testified that he had gone to Donaldsonville to make a homestead entry and had met R. H Cox, who told him that Mr. Wright was a land lawyer and would pay for his homestead and he and Powhatan Causey asked him to sign an agreement by which he would give one-half his land to Wright, which he declined to do, and he returned his back to the Government, whatever that meant. Can read a little, not much. He speaks of a document sent him *with his name* on it and that he read it. It was an agreement to give Wright one-half of the land which he was to homestead, but he never *signed the agreement*. How it could have had his name on it unless he had signed it is the question. His testimony cannot be understood. But it had no relevancy to the Causey land and patent if it could

be understood. He seems to have been too ignorant to testify intelligently, and his testimony is of no value one way or another.

The next Government witness (R., 34)) was Byrd McCrory, but his testimony has not made the least application to the Causey entry and patent. He testified that he made a homesead entry in Ascension Parish. *Can't read.* Agreed to pay Robert H. Cox $200, and he was to pay all of the expenses. He was asked to sign an agreement in regard to this homestead, and was told it was an agreement to give Mr. Wright one-half, and refused to sign it. Coudn't do it. This was all before he made his commutation proof. Understood Mr. Cox wanted him to sign a paper and gave him a pencil to do it with. Said he couldn't read it, and asked what it was. Refused to sign it and that ended the matter. What bearing this testimony had on the entry and patent of Powhatan Causey it is hard to see.

We will now briefly consider the testimony introduced to furnish the slightest ground for impeaching the Causey patents. It is the testimony of:

Zachary W. Causey, (R., 37).
Wm. H. Wright, (R., 37).
J. L. Bradford, (R., 38).
Powhatan E. Causey, (R., 41).
Robert H. Cox, (R., 44).
Saml. M. Burnett, (R. 44).
John C. Harris, (R. 44).
Wm. B. Thibeau, (R. 44).
Henry C. Braud, (R. 44).
Francis Valley, (R. 44)

The last five witnesses only testified that Cox was a notorious liar and unworhy of any belief in a matter in which he was interested.

As to Zachary W. Causey, (R., 37), who had first testified for the Government: Says Powhatan E. Causey is a cousin of his. Believe he was acting in some cases as agent for Mr. Wright in that part of the country. His testimony has no sort of application to the entry and patents of P. E. Causey.

Next we take the testimony of Wm. H. Wright, (R., 37). He says:

> "I drew up Document marked X-1," referring to blank form of document (R., 48). "It is in my handwriting. I had no such contract like it with P. E. Causey or anyone else. Capt. Bradford bought wild, unimproved land from P. E. Causey, Mattie Webb and Z. W. Causey, those people retaining their improved land." This seems to be all the testimony of this witness in any way relating to P. E. Causey, or his land.

These two witnesses, Wright and Z. W. Causey, had testified originally as Government witnesses, but under Rule in Equity 75 their testimony being more favorable to the appellant than otherwise, it was incorporated with his proof.

We next take the testimony of Mr. J. L. Bradford, (R., 38).

He testified that he had been a co-defendant with P. E. Causey but that he had been eliminated in 1907 from the case. He testifies:

> "I had no agreement, nor was I a party to any agreement under which I was to acquire any land of the defendant, P. E. Causey, made prior to the execution of any deeds to me. Says he had money to invest, and bought from Causey in good faith the whole of his land by deed of August 23, 1901, and

next day gave him an option to buy back the eighty acres containing his home and principal improvements. That Causey was a dissipated man, always strained for money, and when he got tired of helping him and lending him money 'he turned against me and quarreled with me.' I repeat that I never made or entered into any contract, agreement or understanding with Mr. Causey prior to his homestead entry under which he was to give or sell or convey to me directly or indirectly any portion or the whole of his land, and I don't believe that hee ever made any such agreement with Wm. H. Wright."

The testimony of this witness is very full and complete, and explains in a natural, open and usual way, his connection with the Causey entry and other entires in the same neighborhood. It is impossible to find anything in it which, even by a hint or a side wind, could prejudice the interests of this Mr. Causey.

And next comes the testimony of Mr. Causey himself, in his own behalf. (R., 41):

It is positively the only thing in the whole record that even indirectly impeaches him or his title. He testified he was 57 years old, (which was in the year 1907). That he made a homestead entry in Ascension Parish some years ago and lived on the land until the fall of 1905. Rented it to the Miles Planting Co. The lands with the improvements on the 160 acres would be worth several thousand dollars.

"In making my homestead entry I had not much assistance. I employed Mr. Wright to help me. My contract with him was verbal. There was another person claiming the land. I told Mr. Wright if you will help me I will give you $200; what I want is for you to help me. There was no contract between me and Mr. Cox. It is not true that I made a contract with Cox; that he was to make my homestead entry for one-half the land. It is no more true than that

I a min Mexico to-day, not a word of it. I had no contract or understanding at all with J. L. Bradford with respect t omy entry that I can remember until I asked Mr. Wright if he would loan me some money without any contract and I would give a note. I told Bradford I never would sign any contract. I sold to Bradford the north 40 and the south 40 of my entry. It was an honest, bona fide sale. I owed him money and I wanted to pay him. I paid that much and owe him yet. Mr. Hunt, Special Agent, came to my house and examined my entry and got me to make an affidavit. Sam Moore told me to make an affidavit, and I said if it will do you any good I will do so. I said I will do it to stop all foolishness. Mr. Hunt, soon after that, wrote me a letter trying to get me to come to New Orleans and meet him at an appointed place on Canal Street, and fix up matter, with hims saying: 'That it would do me a good deal of good.' Soon after I went to New Orleans and met him at his office and said: 'Did you write this letter to me?' He said: 'Yes, sir.' I said: 'Why did you do it?' He said: 'I am sorry for it.' I coudn't tell why he wrote me such a letter, but I thought he tried to bribe me. I said: 'You made a false report against me and you ought not to have done it,' and he said he was sorry for it. I made an affidavit he wrote out and asked me to sign, and it was afterwards I got his letter. I went down to New Orleans at his request. He said he had made a report against me and he hated to have done it. I have lived in Ascension about ten years."

On cross-examination by the United States he says:

"I employed Mr. Wright to fix up my homestead entry, and before the entry was made I gave him a note, gave him several notes, and gave Mr. Bradford one. Didn't owe him anything at that time. That

was to secure him for what he was going to do. After I got my land and made my proof I sold to Capt. Bradford the north 40 and the south 40 and got back the note of mine for $200 as part consideration of the sale. Mr. Wright did not pay the expenses of my entry in the land office; I paid that myself. The expenses and witness fees were about $20. I still have the balance of my land. I am renting it to Mr. McFarland of the Miles Planting Co. I still have the part with the improvements on it. My land was the best in that section of the country. I would take $50 and acre for it," etc.

He testified further that he had been living on his land before he made his entry. It was then held by Mr. Gonzales under an entry which he, Causey, employed Mr. Wright to contest for him, and employed him to do so for a fee of $200, and he did contest the entry and won it for him. In conclusion he testified (R., 43) that Bradford had extended his option to buy back his land up to the 1st of January, 1909, and under it he was enabled to rent his land, beginning January 4, 1903, for three years, for $480 a year. Later he borrowed more money from Bradford and secured him to the extent of $400 of the money so borrowed by pledging the right to receive that much of the rent from McFarland. This was the only important part of his testimony.

It has been said in "The Statement of the Case" that in the spring of 1907 the Government, by the Special Master, took the testimony of many of its witnesses at Donaldsonville, La., and that it was, on the whole, "so damaging to the Government that the Special Master wisely and prudently failed to return it into court until March 18, 1911, that is *four years afterwards*. The unblushing lies the special agents of the Government had dragooned the low, dissi-

pated creatures into telling, even the Special Master couldn't stomach in his open and apparent zeal to serve the land department and the District Attorney. The champion liar the special agents found readiest for their use was Robert H. Cox, who, after testifying at length and with great rancor against the homesteaders and his own homestead entry was asked, on cross-examination by counsel, (R., 44), thus:

> "You have sworn a good many times about your entry from first to last?"

He answers:

> "Yes, sir. And I have sworn to some things that wasn't right. I have sworn to a whole lot of things that I ought not to have sworn to, I know that. I remember when Special Agent Peterson came o my house to examine me about my entry. I gave him some information. I answered a few questions; but I evaded all the questions that I possibly could. I didn't give him any information at all. I treated him with contempt as Mr. Wright had told me to do. I made an affidavit before him. I don't remember exactly what I said in i. He was asking me about this land business."

Asked by counsel:

> "Did you not state to him that it was an honest and bona fide entry and that you had no contract with Mr. Wright to convey to him half he land?"

He answered:

> "I don't remember exactly what statement I made. Of course at that time I knew that I was lying, what I told him when I was making that kind of a statement. It was through whiskey, about the affidavit I made. I didn't think he could use it against me. I don't remember exactly what questions that he

asked me. I knowed that it was crooked, the day that he came there I knew it was crooked."

Asked by counsel:

"And you told him that it was straight?"

He answered:

"I don't remember. I didn't tell him that. I just left it to him to make the proof of it if he could and he told me he said he knew all about it. Mr. Peterson stayed to dinner with me that day. We had canaloupes for dinner. He complimented my babies. Said they were nice babies. I don't remember about the affidavit I made. Since then I done sat down and told him the whole facts in the case. I didn't tell him the facts before. I didn't tell him the truh. I old him a lie and swore to it. Of course I did. What else could I do but tell him a lie?"

The testimony of Mr. Samuel M. Burnett for the appellant furnishes a light by which to read the inside workings of the agents of the land department at that time. He said (Rec., p. 45):

"Has known R. H. Cox since 1891. Were close neighbors. About three years ago Cox had conversation about somebody he wished to contest his homestead entry.

"He wanted to ge me, or anyone, preferably me, to contest his homestead entry. I refused. Told him it was not right. Told him he would get into trouble, and advised him not to do it. He said, 'He had got through with all his money, that he could not own his place, and wanted to get it back; that he got rid of his money and wanted it back; that he had sold it.' Wanted to get it back by having it contested as an illegal entry 'and have it canceled and then re-enter it.' That Floid had been allowed to re-enter his land."

Asked:

"Was it generally understood among the homesteaders back there, after Floid got his new entry and got his land back, that any of them, by swearign that their entry was illegal and cancel it, would get their land back?"

He answered:

"Yes, sir; it was the general impression."

Q. You mean that the impression was that anybody could do that.

A. Yes, sir.

Q. No matter who they were?

A. Yes, sir.

Q. And no matter to whom they sold?

A. Yes, sir. Anybody that made a fraudulent entry the impression was that he could get his entry contested on the ground of its being fraudulent and then re-enter it.

Q. It was on the ground of fraud?

A. No, sir; it was on the ground that Mr. Floid did that same thing and that was the cause of this impression to be spread out. That Mr. Floid did the same thing. He had relinquished his entry and he was permitted to re-enter. The impression was that if anybody who had made a homestead entry and would swear that it was fraudulent and get witnesses to swear that it was he could relinquish and re-enter it. I can mention several entrymen who had that impression; both the Coxes, the father and son, told me it was their impression. It was the general talk. A great many thought they could do it, all homestead people. They hought they could have their entries upset by swearing they were fraudulent.

Mr. John C. Harries, witness for appellant (Rec., p. 46) testifies that he has known T. R. and R. H. Cox for ten years intimately. That their reputation for truth and

veracity was very bad, and in consequence of it he would not believe them on oath.

Asked by counsel for appellant:

> "What is the general sentiment in that country of late years about surrendering their homestead and entering them back again, getting their entries canceled and getting them back again?"

He answered:

> "Well, they had an idea that they could get their land back again if they would surrender them to the government. Robert H. Cox had that idea. He talked to me about it. He said he would get his land back by prosecuting you, meaning J. L. Bradford."

Wm. B. Thibeau, another witness for appellant (Rec., p. 47), testified:

> "I have known Robert H. Cox and T. R. Cox intimately ever since I was a small fellow. I couldn't say how long. I know their general reputation for truth and veracity in their neighborhood. It is a pretty bad one. I have known R. H. Cox to be a rascal all his life. Wouldn't believe either one on oath. The general impression among the people that entered homestead land back there was that they expected to get their lands back. I have heard the two Coxes say so. Also James Taner, F. L. Berthelot and Mrs. Dave Taner, formerly Mrs. Cotton."

By the Master:

Q. When you spoke of their getting their land back—back from whom?

A. Back from the Government.

Q. How did the land get away from them?

A. They entered it and sold it to Mr. Bradford, so they said.

Q. I am trying to get the matter clear. You say they expected to get their land back? they told you that they expected to get their money back?

A. Yes, sir.

Q. From whom?

A. From the Government. That is, Mr. Hunt said if they would come in here and testify about all of this stuff, he would cancel their land and give it back to them.

Q. That is what they told you?

A. Yes, sir.

Next witness for appellant (Rec., p. 47) is Henry C. Braud, and a respected one. He testified he is a member of the State Legislature; is living near the Coxes and knew them well; their general reputation for truth and veracity is bad; would not believe either one on oath.

In order that the Court may understand the foregoing testimony about the homestead entrymen in that unfortunate population containing the P. E. Causey homestead entry it may be proper to state that the special agents of the land department in their war on one or two citizens who had incurred their jealousy and hostility and who had invested a good deal of money in buying and improving homestead lands, encouraged the belief that entrymen who had sold their lands to such individuals for good prices and had received payment could, by proper application to the Land Department, surrender their lands to the Government and re-enter them again by swearing that their first entries were fraudulent; thus cheating their vendees and getting back the same land they had sold. None of them, of course, being willing, or, if willing, unable on the cancellation of their first entries to reimburse their vendees. Reprehensible and surprising as this practice was, the record in this case has much proof that it existed, and the foregoing wit-

nesses, Burnett, Harris, Lodwick, Wm. B. Thibeau and Robert H. Cox, gave more or less testimony about it. (See the testimony of Lodwick, Rec., pp. 35, 36.) He had sold his land, after havign made his regular five-years' proof and obtained the equitable title, to Bradford for $400 cash, and then joined in the war against Bradford, applying regularly, by counsel, to have his entry canceled for fraud and he be permitted to enter it again, saying he was not able to repay any of the money he had received; not owning anything, no land, nor even a horse.

Burnett testified (Rec., p. 46) that Floid had done the same thing, and it was his success which induced others to try it.

Another thing the Court will notice. On page 48 of the record the Court will see Exhibits X 1, 2 and 3. They seem to have been prepared to be signed by Henry Nickens, Henry H. McNabb and Sallie V. Knox, in order to compensate Wm. H. Wright for information and money he *had* furnished them, respectively, in making their respective homestead entries. None of them had been signed by anyone, and the question is: Of what value were they, as evidence against Wright or the entrymen. They seem to suggest that they were put in evidence to damage Mr. Wright, but even as against him they could have no force as legal evidence, and in no event could they affect the entry and patent of P. E. Causey.

We now submit a few authorities in support of some of the errors assigned.

It is well settled that, in dealing with landed property, selling, leasing, buying, etc., the United States is subject to the same rules and principles in its contracts with its citi-

zens that the citizen or corporation would be subjected to under like conditions of law and fact, with one exception, perhaps, that is, as to statutes of limitation. And even with regard to that exception Congress saw fit, by Section 8 of the act of March 3, 1891 (26 Stat., 1095), to declare that suits by the United States to vacate patents *theretofore* issued should be barred unless brought within five years from its passage, and that patents *thereafter* issued should not be annulled unless the Government brought its suit within six years from their date.

Section 7 of this act established a limitation against the Government of two years from the date of the Receiver's receipt issued upon any final entry under the homestead, timber-culture, desert land, or pre-emption laws. With these exceptions it appears that in their contracts respecting public lands there must be perfect equality between the citizen and his Government.

In *United States vs. Stinson*, 197 U. S. 200, a bill brought to cancel a patent for land on allegations of fraud, the Court said (p. 205):

> "The Government is subjected to the same rules respecting the burden of proof, the quantity and character of evidence, the presumptions of law and fact, that attend a prosecution of a like action by an individual."

And added this extract from the leading *Maxwell land grant case*, 121 U. S. 325:

> "It should be well understood that only that class of evidence which commands respect, and that amount of it which produces conviction, can make such an attempt successful."

In *United States vs. Detroit Lbr. Co.*, 200 U. S. 321, it was sought to differentiate the rights of the Government, in suits in equity to cancel its patents to land, and similar suits brought by individuals. But the Court repudiated such a doctrine, saying (p. 339):

> "It is a mistake to suppose that for the determination of equities we must look only to the statutes of Congress. The principles of equity exist independently of and anterior to all congressional legislation, and the statutes are either annunciations of those principles or limitations upon their application in particular cases. In passing upon transactions between the Government and its vendees we must bear in mind the general principles of equity and determine rights uopn those principles, except as they are limited by special statutory provisions."

If under the principles of equity, as practiced in the United States equity courts, the vendor who files a bill to annul a sale of land for fraud practiced by the vendee must, as a condition to his right of recovery, return the price to his vendee, and it seems that he must do so under the foreforegoing authorities and under general principles, then it follows that before the Government could repudiate the sale to Causey, annul its patents and take back its lands, it is bound to restore matters as they were before the contract of sale. The negative of this proposition assumes that the United States has the right to inflict on Causey a forfeiture of his money. Is it equitable to allow the Government to take his land and retain the price he paid about sixteen years ago, and which has been in the treasury ever since?

This matter, as a defense, was raised by demurrer (Rec., p. 5), in the District Court, which was overruled by

Parlange, District Judge, who considered that it involved the question as to the right of the Government to exact a forfeiture of the price paid by Causey on a commutation of his entry.

He took the position that no act of Congress had ever affirmatively allowed repayment in cases of fraudulent land entries, citing in a general way pages of authorities contained in text-books, chiefly the Am. & Eng. Ency. of Law, 2nd Ed., Vol. 26, p. 382; Vol. 24, p. 621; Vol. 21, p. 85, Note. Concluding with reference to the whole matter as "settled by the Supreme Court" in *United States vs. Trinidad Coal Co.*, 137 U. S. 170, 171, and *Morris vs.. United States*, 174 U. S. 245.

But none of the authorities cited have the slightest application to the case at bar. The judgments on the demurrers maintain that the rules of decision and the principles *of equity* in suits by the United States against its citizens differ essentially from those which should prevail in suits between man and man. But this is contrary to the principle of equality recognized in all courts and sanctioned by numerous decisions. In *United States vs. The Dalles Mil. Road Co.*, 140 U. S. 599, certain land grants and patents in Oregon were attacked for fraud by the United States in bills in equity in the Circuit for Oregon, in which the Government failed, chiefly on a defense of *bona fide* purchaser for value without notice. Later it was discovered that the grant might be attacked on another ground than any alleged in the original suit. Thereupon the same parties were made defendant *in another bill* (192 U. S. 355), seeking a decree on the ground that much of the land was within the limit of an Indian reservation which the bill alleged the Government could not grant without the consent of the Indians. The defense was that the Government, like any other litigant,

was bound by the rules of practice and principles of equity to aver *in its first* suit all its grounds of action, and the Court sustained such contention, saying on page 358:

> "But the whole tendency of our decisions seems to require a plaintiff to try his whole cause of action and his whole case at one time. He cannot even split up his claim. (*Fetter vs. Beale*, 1 Salk. 11; *Trask vs. Hartford, etc., R. R. Co.*, 2 Allen, 331; Freeman on Judgments, 4th Ed., Secs. 238-41.) And, *a fortiori*, he cannot divide the grounds of recovery. Unless the statute of 1889 (the act under which suit was brought), put the former suit upon a peculiar footing, the United States was bound *then* to bring forward all the grounds that it had for declaring the patents void, and when the bill was dismissed, was barred as to all by the decree." (Authorities cited—*Werlein vs. N. O.*, 177 U. S. 390; *Bienville Water Supply Co. vs. Mobile*, 186 U. S. 212, 216, 217; *Hoseason vs. Keegen*, 178 Mass. 247; *Wildman vs. Wildman*, 70 Con. 700, 710; *Sayers vs. Auditor Genl.*, 124 Mich. 259; *Foster vs. Hinson*, 76 Iowa, 714, 720; *State vs. Brown*, 64 Md. 199; *Boyd vs. Boyd*, 53 App. Div. N. Y. 152, 159; *Shaffer vs. Study*, 14 La. An. 575; *Henderson vs. Henderson*, 3 Hare, 100, 115.

The error of the District Judge in holding that the United States was entitled to a forfeiture of the price paid by Causey grew out of analogy between that right under the pre-emption law of September 4, 1841, Sec. 13 (5 Stat. 457), which declared with reference to the oath of entrymen under the pre-emption system:

> "If any person taking such oath shall swear falsely in the premises, he or she shall be subject to all the pains and penalty of perjury, *and shall forfeit the money which he or she may have paid for said land, and all right and title to the same.*"

But in adopting the *homestead* system by the act of the 10th of May, 1862, (12 Stat. 392), now R. S. 2289, 2290, Congress did not see fit to extend to that new system this rule of forfeiture. And there is not a word in the original act, nor in any of the numerous amendments and modifications that even impliedly authorizes in cases of the rankest fraud the forfeiture contended for. In adopting the commutation feature which really converted the homestead into a pre-emption, Congress did not see fit to go any further in grafting the old pre-emption system into the liberal homestead system. And, indeed, soon afterwards repealed the pre-emption system entirely by the Section 4 of the act of March 3, 1891 (26 Stat. 1095).

The District Judge thought that the two cases (*United States vs. Trinidad Coal Co.*, 137 U. S. 170, and *Morris vs. United States*, 174 U. S. 245) sustained his action, and authorized the forfeiture of the price the United States received from Causey. But this was an obvious mistake. The first case was a suit by the Government to cancel patents for *coal* lands acquired fraudulently by a corporation in Colorado, the entries having been made, as held by the Court, under Sections 2347, 2348, 2350 and 2352 of the Revised Statutes (p. 165), where the sections are given, and the defense being by demurrer, it was clear a great fraud had been committed under those particular sections, the Court stating (p. 167):

> "There is consequently, in view of all the allegations of the bill, no escape from the conclusion that the lands in question were fraudulently obtained from the United States."

A most critical reading of the sections of the revision on which the case arose fails to show any express authority

providing for the forfeitures of the price paid by the corpoartion in order to consummate their fraud, and therefore the Government was met on the trial, with the demurrer founded on the general equitable doctrine requiring it to restore the price it had received. But the Court refused to sustain the doctrine in that particular case, saying: "If the purchasers were entitled to restitution of the price, it was to be supposed Congress would make an appropriation for that purpose."

It is a universal principle that penalties and forfeitures cannot be inflicted on implications and inferences, but they must rest on clear and express authority of law, and can never be extended by implication. Under the pre-emption system we have seen the authority was clear and express, but under the homestead system no such authority exists, or ever did exist. See *Elliot vs. R. R. Co.*, 99 U. S. 575, in which the Court said:

> "Penalties are never extended by implication. They must be expressly imposed or they cannot be enforced."

And the Court based its ruling on what it had decided in *Erskine vs. Milwaukee, etc., R. R. Co.*, 94 U. S. 619.

In the case, too, of *Trinidad Coal Company*, the forfeiture there contended for by the Government, and apparently sustained by the Court, it seemed to have been overlooked by all hands that the timber and stone act of June 3, 1878 (20 Stat. 89), expressly provides for a forfeiture of the money paid on *coal land* entries in case of false swearing in the application. In the *Colorado case*, too, the Court will observe that the payments on the coal land entries were not made by the entrymen themselves, while in the *Causey case*,

the payment of the price of the land was made by the entryman himself, who was a settler and cultivator.

The other case, *Morris vs. United States*, relied on by the District Judge, did not involve United States lands at all, and arose under the old Maryland and Virginia statutes underlying titles to Potomac flats in the City of Washington, and has no application at all to public lands of the United Sttes.

> "A court of equity is always reluctant to rescind, unless the parties can be put back in *statu quo*. If this cannot be done it will give such relief only where the clearest and strongest equity imperatively demands it." (*Grymes vs. Sanders et al.*, 93 U. S. 55.) Citing authorities.

In addition to the direct allegation of the bills as to the prices paid by the homesteaders and received by the Government, we have the direct evidence of the certificates of the Register and receipts of the Receiver, issued at the time each entryman commuted his or her entry, testifying that the land warrants then surrendered by each were received *in payment of the price* of the land. There can be no sale without a price, and though the theory of the District Judge may be true, which is denied, that the small price paid had but little relation to the actual value of the land; yet that relation was fixed by the parties, vendors and vendees, and the quibble now made that the land was worth much more is puerile and absurd. Besides, the *bill* shows that the lands then entered were subject to sale as public lands at the minimum price of $1.25 per acre, and the presumption is a fair one that the Government was never able to get more.

The Honorable District Judge seemed to found the right of a vendor to cancel these sales, take back the lands

and retain the prices paid, upon general principles; entirely ignoring the positive rule of law in all free governments that confiscations and penalties imposed upon the citizen or subject must find their justification in positive and unequivocal legislative enactment. They cannot rest on implications and construction, and the Government is asked to cite a single decision of any respectable court to the contrary in any case arising under the United States homestead law. The nearest approach to such a decision is *United States vs. Minor*, 114 U. S. 233, which was a bill in equity to cancel for fraud a land patent issued on a *pre-emption entry*, under Section 2262, R. S., which section, we have seen, clearly and expressly provides, with respect to pre-emptors, and pre-emptors alone:

> "If any person taking such oath swears falsely in the premises he shall *forfeit* the money which he may have paid for such land, and all right and title to the same."

A question arose and was certified to the Supreme Court (p. 236) raising the point whether the Government had to make offer to return the purchase money; and in answering this (p. 238) the Court unhesitatingly declared that Section 2262, R. S., quoting the same, authorized a forfeiture. But the decision was based upon the express language of the statute. Can we suppose they would have done that had the entry arisen under the *homestead* system where there is a significant absence of such a provision?

It has been seen that the pre-emption system arose chiefly out of the act of September 4, 1841 (5 Stat. 456), the Section 2262 of the revision being copied from Section 13

of that act; also that the homestead system arose twenty-two years later, and when this entry was made was to be found in Sections 2289 to 2317 of the revision, which do not re-enact the old provision as to forfeiture of price, etc., although Section 2301 authorizes, as we have seen, the commutation of the entry into a cash sale.

In 1910 the question arose in the Land Department whether, under the act of Congress of April 28, 1904 (33 Stat. 525), the entryman of *coal* lands in Alaska was compelled to make payment for the land applied for pending contests or protests against his right of entry; and the Land Department, true to its instincts, contended for the payment. The entryman protested that this requirement would lead to a practical forftiture in case the entry should ultimately be disallowed, or cancelled after allowance, as the money in the meantime would have gone into the Treasury, whence nothing but an act of Congress could get it. The Secreary of the Interior referred the question to Attorney General Wickersham, who maintained that the payment should *not* be made until the entry was allowed, saying:

> "To hold otherwise would be practically to forfeit the payment in case the contest resulted in withholding patent. Such a result is abhorrent to justice. A penalty must be expressly imposed and can never be extended by implication. (*Elliott vs. E. Pa. R. R. Co.*, 99 U. S. 573. The Timber and Stone Act of June 3, 1878 (20 Stat. 89), provides for a forfeiture of the money paid in case of false swearing in the application. No such provision is found in the Alaska Coal Act. It is true that in the case of *United States vs. Trinidad* (137 U. S. 160), Mr. Justice Harlan held that where the Government sues to annul patents fraudulently obtained under the *general coal land act*,

> a tender of the purchase price is unnecessary. The same was held in *United States vs. Minor* (114 U. S. 233) as to a *pre-emption* claim of agricultural land. In the first-named case Mr. Justice Harlan suggested an appropriation by Congress, and out of that suggestion arises the real reason why the tender need not, in fact can not, be made; for after money is paid into the United States it cannot be withdrawn except by force of statutory authority. (See Decisions of the Department of the Interior relating to Public Lands, Vol. 39, p. 326.)"

This opinion might suggest to the Court that since the payment made by the homesteader Causey must have long ago gone into the Treasury, a decree for restitution would be ineffectual and, therefore, should not be made.

But the bill shows that the payment was made in United States land scrip, or warrants, and those warrants are, of course, in the General Land Office in Washington, and may be readily restored if the Court finally cancels the patents.

Referring to the case of *Elliott vs. E. Pa. R. R. Co.*, 99 U. S. 573, cited by the Attorney General, we find (p. 576) this recognition of the general rule:

> "Penalties are never extende dby implication. They must be expressly imposed, or they cannot be enforced."

In that case there is some analogy to the view the Government takes of these homestead cases. There it was contended that a penalty plainly denounced under Section 119 of the internal revenue laws was authorized by implication under Section 122, just as now it is contended by the Land Department and the Government that, as a penalty of forfeiture is denounced by the *pre-emption* law, it must be ex-

tended by implication to the *homestead law*. But the Court says, speaking of the penalty (p. 577):

> "But if they did not apply to Section 119, it is difficult to see how they can be to Section 122. As it was supposed to be necessary to make express provision in Section 119 for the payment of this additional percentage in order to charge the taxpayer, and it was omitted in Section 122, the *conclusion* is irresistible that it was the intention of Congress to impose no other penalty for a failure to comply with the requirements of this section than the one which is specifically given."

The failure of the Legislature to expressly provide for the forfeiture of the price paid by a homestead entryman under Section 2301, R. S., while expressly providing for such forfeiture by *pre-emptioners* under Section 2262, and, later in the case of timber land entries, under Section 2 of the act of June 3, 1878 (20 Stat. 89), is very significant and conclusive, and we think we can safely rest our argument on these three laws alone, even if there were no decisions of the courts upon them.

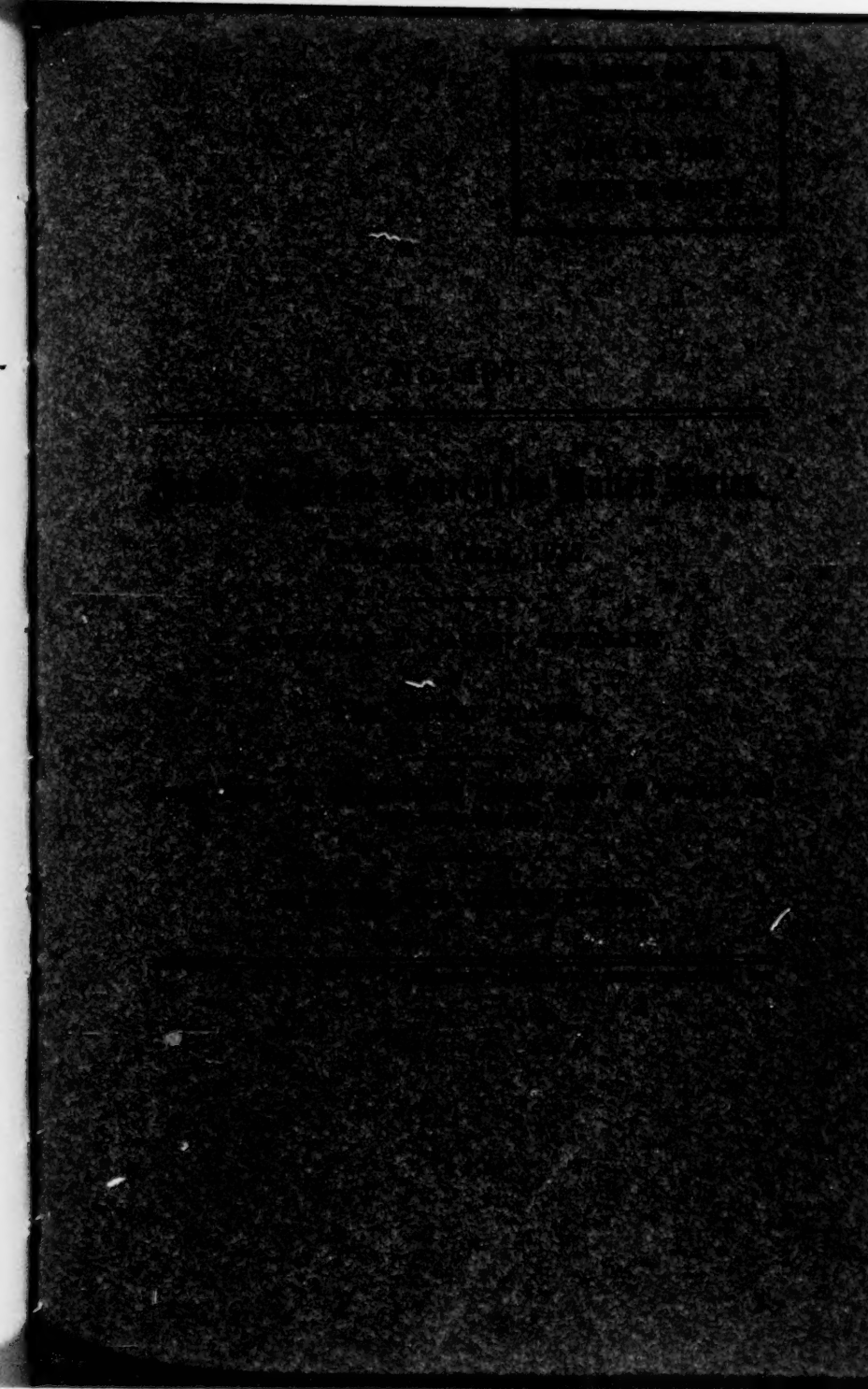
In conclusion, we confidently ask and expect the Court to dismiss the bill, under the authority of the *Throckmorton case*. But if this is not done, we contend that on the merits the evidence of fraud falls far short of the rule in the *Maxwell Land grant case*. In this connection we ask the Court to consider what we have said before, that the only fraudulent acts charged against the homestead entryman which are well pleaded and such as could be made the subject of proof in a bill in equity were the allegations of fraud committed by the entryman in making his final proof through his witnesses Lodwick and Harris, and as to them the proof fails to establish any fraud whatever.

We ask that the decree appealed from be reversed and the case be remanded, with directions to dismiss the bill because not brought by authority of law.

T. MARSHAL MILLER,
Attorney for Appellant Causey.

NEW ORLEANS, LA., January 18, 1916.

NOTE. The Court will observe that the judgment appealed from (R.ec., p. 52) was not a unanimous one, the senior Judge (Pardee) dissenting, but, according to his custom, failing to file a dissenting opinion.



In the Supreme Court of the United States.

OCTOBER TERM, 1915.

POWHATAN E. CAUSEY, APPELLANT,
v.
THE UNITED STATES. } No. 197.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

Not having as yet received the appellant's brief, we do not know definitely what points he intends to rely upon at argument. Neither is the situation illumined by any opinion from the court below. In these circumstances it becomes necessary for us, besides stating the material portions of the record, to deduce the appellant's probable contentions from the assignment of errors and the briefs heretofore used.

This is one of a number of suits which were instituted by direction of the Attorney General at the request of the Secretary of the Interior for the purpose of annulling various patents which had been

procured by different patentees, through fraudulent abuse of the homestead law. James L. Bradford and William H. Wright were named as defendants in all the bills and joined in each case with the person in whose name the patent had been issued. The defendants in the present case were Bradford, Wright, and Powhatan E. Causey, the appellant. It is conceded that the land involved (157.77 acres in the eastern district of Louisiana) was entered by Causey under the homestead law in March, 1900, and patented to him on February 28, 1902, under that law, in pursuance of a final entry made in his name. (R. 2, 7, 8.) Instead of living on the land the full period, he took advantage of the commutation provision of the homestead law which permits of final proof being tendered after fourteen months of residence, etc., upon payment of $1.25 per acre. The final proof was made in August, 1901 (R. 2, 8), and in lieu of the cash two so-called Supreme Court scrip certificates were delivered to the register and receiver. The nature of this scrip will be considered later.

The bill correctly describes the manner in which the homestead entry was commuted, but incorrectly proceeds to state that upon such location "a patent" was issued by the United States. (R. 2.) The answer of the defendant, however, shows that two patents were isssued (R. 8), and this is in accordance with the regulations issued by the Commissioner of the General Land Office, which provided that, when offered in commutation of a homestead entry, each

certificate of location or piece of scrip should be located upon a specific tract of land. As there were two certificates of location tendered by the entryman, compliance with the regulations required that they be noted as two separate transactions, to the end that proper account might be kept of the scrip, a record of which was made in the General Land Office. (27 L. D. 167.) This mistake in the bill was obviously an oversight in the nature of a clerical error; and, although the record does not show an actual amendment to correct it, the case proceeded upon the assumption that both of the patents, issued as they were upon a single entry, and dependent as they were upon the same state of facts, were involved without distinction in the bill and subsequent proceedings.

The bill alleges that, when the original entry was made by Causey, the defendants Bradford and Wright were engaged in the prosecution of a scheme to defraud the Government by inducing various persons, including Causey, to make homestead entries of lands in the parish of Ascension and State of Louisiana, pursuant to an understanding that when the entries were perfected and the patents received one-half or all of the lands so patented would be conveyed to Bradford and Wright, subject to a pretended reservation of the privilege on the part of the patentee in each case to buy back one-half of the lands conveyed; that all expenses incident to the entries were to be paid by Bradford and Wright, who were also to

furnish such legal services as might be necessary; and that, pursuant to this scheme and understanding, the defendant made his original and final entries, and subsequently, on August 23, 1901, transferred all the lands to Bradford for a pretended consideration of $800. (R. 2, 3.)

The defendant Wright filed a disclaimer. (R. 18.) Bradford demurred, and when his demurrer was overruled (R. 6), filed an answer (R. 18), which, however, he later withdrew, consenting to a decree cancelling the patent as to all of his interest therein, but without prejudice to the rights of the appellant (R. 14, 15). Causey, the appellant herein, demurred to the bill upon the following grounds:

First, that, upon the commutation of the entry by the location of the Supreme Court certificates or scrip, the original contract represented by the homestead entry was abrogated and another contract made.

Second, that the bill contained no offer of repayment or return to the appellant of the certificates of location which he had tendered in payment for the land.

Third, that the bill failed to show that it had been brought by lawful authority of the United States. (R. 5, 6.)

This demurrer was overruled (R. 6), and the appellant then answered, admitting the making of the entry but denying the allegations of fraud. (R. 7–13.)

The answer expressly admitted (paragraph fourth, R. 11) the allegation of the bill (paragraph fourth, R. 2) that in support of his homestead application Causey had made the statutory affidavit as to his good faith, and the absence of any agreement to convey, etc.

A special master was appointed by the court (R. 14) to hear and take the testimony and evidence and report the same with his findings of fact and conclusions of law. The master found, among other things, the following:

> I find as a fact that in support of his application for homestead Powhatan E. Causey made the affidavit of which copy is returned among the exhibits herein; and I find that said declaration was false and fraudulent in that said Powhatan E. Causey had at that time agreed to transfer to William H. Wright one-half of the land applied for when the same should be patented to him; and I find to that extent said homestead entry was made by said Powhatan E. Causey for the benefit of said Wright; and I also find that in making said agreement said Wright was acting for James L. Bradford under a general understanding with said Bradford that said Bradford would furnish assistance in carrying out such agreements and that the transfers should be made by said Bradford; and that said agreement with Powhatan E. Causey was in pursuance of the scheme hereinafter set out.
>
> I find as a fact that at and about the time said application was made said Bradford

and Wright were engaged in the prosecution of a scheme to deprive the United States of the title and possession of certain lands in the parish of Ascension; and that in execution of said scheme the said Wright agreed with the said Powhatan E. Causey to make said homestead entry with the understanding that upon perfecting the said entry and receiving a patent therefor would transfer and convey to the said William H. Wright one-half of the lands so patented in compensation for expenses, costs, and services, to be furnished and rendered by said Wright; and I find that said Wright, to the knowledge of said Bradford, acted for the said Bradford in making such agreement with the understanding that the said Wright would procure the making of the transfer to said Bradford or himself for the benefit of both of them, said Bradford to assist in furnishing funds and scrip and services or some of these considerations.

I find that on July 3, 1901, said Powhatan E. Causey made final proof with affidavits of witnesses as shown by exhibits filed; and that said final proof was false and fraudulent as being made in pursuance of the agreement hereinabove stated, and said Powhatan E. Causey and said Wright and said Bradford knew at that time all the facts hereinabove stated. (R. 19, 20.)

The master adopted as his conclusions of law the charges of the bill that the homestead entry, having been made pursuant to an illegal, corrupt and fraudu-

lent agreement, was null and void, and that in consequence, the patents should be canceled.

The trial court entered a decree canceling the patents (R. 27), and the case was taken to the Circuit Court of Appeals (R. 28), where the action of the trial court was affirmed in a memorandum opinion as follows:

> A majority of the judges are of opinion that the evidence submitted in the court below on the trial of this case fully justifies the finding that the appellant in obtaining and perfecting his homestead entry was guilty of such fraud as warrants the decree below vacating the patent. (R. 52.)

Statement of argument.

1. The use of the scrip in lieu of cash, in the commutation of the entry, did not alter the character of the entry, as one made under and governed by the homestead laws, or render the false representations any the less material and fraudulent.

2. Relief was not dependent on a return or tender of the scrip by the Government.

3. The authority for the institution and prosecution of the suit sufficiently appears.

4. The findings of fact were supported by sufficient evidence.

ARGUMENT.

I.

The use of the scrip in lieu of cash, in the commutation of the entry, did not alter the character of the entry as one made and governed by the homestead laws, or render the false representations any the less material and fraudulent.

The scrip used by the defendants to commute the homestead entry was issued under the act of June 22, 1860 (12 Stat. 85, sec. 6), for the adjustment of private land claims in Florida and other States (as extended by the acts of March 2, 1867 (14 Stat. 544), and June 10, 1872 (17 Stat. 378), which provided, among other things, that, where portions of confirmed land claims had been disposed of, the confirmees should be entitled to make entry of other public lands of equal area, subject to the restriction, however, "that said entry be made only on lands subject to private entry at one dollar and twenty-five cents per acre, and as far as may be possible in legal divisions and subdivisions according to the surveys made by the United States."

By the act of January 28, 1879 (20 Stat. 274), it was provided that certificates of location or scrip in evidence of rights occurring under the before-mentioned acts should be issued by the Commissioner of the General Land Office, to be located as provided in the sixth section of the act of 1860, *supra*, or in the payment of preemption or commuted homestead claims. There was a further provision that the scrip might be subdivided at the request of the confirmees

to correspond with legal subdivisions of land, and should be assignable according to regulations to be prescribed by the commissioner. The terms governing the use of such scrip in preemption and homestead entry cases were set forth in section 2, which is as follows:

> That such scrip shall be received from actual settlers only in payment of preemption claims or in commutation of homestead claims, in the same manner and to the same extent as is now authorized by law in the case of military bounty-land warrants.

For further particulars regarding this scrip and the method of use see The Public Domain, pages 950 *et seq.* The use of bounty-land warrants is explained in the same volume, pages 712 *et seq.*

By the act of March 2, 1889 (25 Stat. 854), Congress withdrew from private cash entry all public lands of the United States except those in Missouri. Afterwards an attempt was made to make direct entry of certain lands in Louisiana by means of a certificate issued under an act approved June 2, 1858 (11 Stat. 294), which, like those issued under the act of 1860, was applicable only to lands subject to private entry at $1.25 per acre except when used in lieu of cash in cases arising under the preemption and homestead laws. The department held that the right to make direct entry of public lands elsewhere than in Missouri by the use of such scrip had been taken away by the act of March 2, 1889. (*McDonogh School Fund*, 11 L. D. 378.)

In several later decisions, including that in the case of *J. L. Bradford* (31 L. D. 132), the department held that the act of 1889 was *not* intended to take away the right to locate such certificates under circumstances which would have allowed of their use if the act had not been passed—that is, they remained applicable to lands which had been "offered" before the date of that act, and were then salable at private cash entry at $1.25 per acre.

The position of the department, however, was again reversed in the case of *Lawrence W. Simpson*, January 31, 1907 (35 L. D. 399), the reversal being based upon the view that another act of Congress, approved December 13, 1894 (28 Stat. 594), had placed a legislative construction upon the act of 1889. The reasons for this view are quite fully discussed in the department's opinion.

We need not, however, pursue further the question whether the certificates which were used in this case to commute the homestead entry of the appellant might have been employed in the acquisition of the same land directly. The record does not show whether this land had been "offered" before the act of 1889 was passed, and therefore it does not appear whether the land was ever subject to private sale at $1.25 per acre and consequently subject to direct scrip location. Waiving this, however, the fact that the scrip was employed as a means of acquiring patent under the homestead laws pursuant to an antecedent and subsisting agreement which they expressly and

unqualifiedly condemn was a sufficient reason for annuling the patents, whatever right the scrip-owner might have had to enter and acquire the same land directly by an open and honest application of the scrip based upon the statutes which govern its use. (See *Bailey* v. *Sanders*, 228 U. S. 603, 608; *Gilson* v. *United States*, 234 U. S. 380, 384.)

The scheme devised by Bradford, with the assistance of Wright, and participated in by this appellant, was necessarily a fraud upon the administrative rights of the Government. It also operated, fraudulently, to produce a segregation of the land from the public domain and place it in the exclusive possession of the appellant during the period between the initial homestead entry and the application of the scrip.

II.

Relief was not dependent on a return or tender of the scrip by the Government.

United States v. *Trinidad Coal & Coking Co.* (137 U. S. 160, 170).

Heckman v. *United States* (224 U. S. 413, 447).

III.

Authority for institution and prosecution of the suit sufficiently appears.

The bill purports to be a bill of the United States, filed through the assistant United States attorney for the proper district. It bears the signature of that official, but does not show expressly on its face that the institution of suit was authorized by the Attorney

General. In a number of cases (*United States* v. *Throckmorton*, 98 U. S. 61, 70; *McLaughlin* v. *United States*, 107 U. S. 526; *Western Pacific* v. *United States*, 108 U. S. 510, 512; *Mullan* v. *United States*, 118 U. S. 271, 276) this court has had occasion to consider the manner of exhibiting the sanction of the Attorney General in a suit of this character. In *Throckmorton's* case, *supra*, the bill purported to be brought by the district attorney "on behalf of the United States." This court was of opinion, however, that there was nothing in the case to establish that the Attorney General had ever been consulted or given his assent. The case wore a very strong, if not conclusive, appearance of a suit designed to subserve a private interest by help of the peculiar powers and immunities enjoyed by the Government in a proceeding of its own. It was an attack upon a solemn judicial decree of confirmation and a patent issued thereon, brought after so long a lapse of time as must have barred all hope of relief to any litigant except the Government itself. This court, therefore, declared, page 71:

> That without special regard for form, but in some way which the court can recognize, it should appear that the Attorney General has brought it [the suit] himself, or given such order for its institution as will make him officially responsible for it and show his control of the cause.
>
> "It does not appear," said the court, "that he or his successors have ever given the slightest attention to the case. In the argu-

ment of it before us no officer of the government appeared."

Attached to the record in that case was a bond whereby certain private persons undertook to indemnify the United States against costs. The case was evidently one in which officials of the Government were allowing its name to be used by private claimants employing their own counsel.

In the case at bar there is nothing whatever to cause a doubt that the suit was instituted and has since been prosecuted by and on behalf of the United States alone. In the absence of some evidence, or at least appearance, to the contrary, we submit that the facts that a suit of this character is begun in the name of the United States through the assistant United States attorney, that it is prosecuted in the trial court by the United States attorney, defended by him in the court of appeals, and defended here by the Department of Justice through an Assistant Attorney General should suffice without more to raise the presumption of authority from the Attorney General.

The assistant United States attorneys are appointed under the act of May 28, 1896, section 8 (29 Stat., 181), by the Attorney General, who, by virtue of the Revised Statutes (sec. 362), exercises superintending control over the district attorneys and their assistants. Written instructions to govern the United States attorneys and their assistants, in force when this suit was instituted and since, were promulgated by the Attorney General April 1, 1904.

They provide, among other things, that, in the performance of their official duties, the assistant attorneys shall be guided by the instructions to the district attorneys (instruction 1073); that the latter shall report to the Department of Justice the institution of all suits, and make regular reports thereafter from time to time, showing their progress and each step taken (instruction 1208 *et seq.*). There were also regulations made by the Solicitor of the Treasury and embodied in the above-mentioned instructions from the Attorney General, which, by direction of the latter "must be fully and carefully complied with," one of which (instruction 1243) expressly forbade any district attorney from commencing any civil suit or proceeding in the name of the United States without instructions from the Solicitor of the Treasury, or by direction of the Attorney General or some other person or court authorized by law to give such direction, except in extraordinary cases where loss or danger to the interests of the United States would result from delay, in which latter event the attorney's action must be reported immediately.

It is thus apparent that, in the absence of express authority from the Attorney General (there being no reason for supposing an exigency to have existed), the institution of this suit by the district attorney or assistant would have been a breach of duty, and that it could not have been carried on as it was in the circuit court, or, subsequently, in the court of appeals, without the knowledge and approval of the Attorney General save as a result of another and

continuous breach of duty by the district attorney's office.

In *McLaughlin* v. *United States, supra*, the facts that the objection was not raised in the trial court, and that the case was argued in this court on behalf of the Government by an Assistant Attorney General, who filed a certified copy of an order from the Attorney General directing the district attorney to bring the suit, were regarded as sufficient. The same ruling was made in *Western Pacific* v. *United States, supra*. Those two cases plainly govern the case at bar in this respect, unless they may be substantially distinguished upon the ground that in the present case the objection was raised in the trial court by the demurrer. In the present case the letter from the Attorney General, directing suit, ~~with~~ its inclosures, were exhibited to the court below and will be exhibited to this court in certified copies. They are printed as an appendix to this brief. If their exhibition was necessary it may fairly be assumed that the originals were exhibited to the trial court upon the argument of the demurrer.

In *Mullan* v. *United States, supra*, the bill was signed in the name of the Attorney General by the district attorney. The objection was made in this court that it should be dismissed, because it did not show on its face that it was filed by the Attorney General. (118 U. S. p. 276.) The objection was disposed of in these words:

> On the argument, however, the Assistant Attorney General produced from the Depart-

ment of Justice a certified copy of an order of the Attorney General directing the United States attorney for the district of California to proceed in the matter, and this it was held in *Western Pacific Railroad Co.* v. *United States* (108 U. S. 512), was enough to overcome such an objection.

The authority of an attorney at law to appear in litigation for a private party is presumed unless it is denied and disproved as a matter of fact. Under the regulations and practice governing the United States attorneys as they now exist, and as they were when this suit was begun, it would seem that a like presumption of authority should be indulged in a case of this kind. At all events, in view of the three decisions of this court last above mentioned, there can be no doubt that when the Attorney General directly, or through his assistant, takes charge of the case in this court and proves in an appropriate manner—that is, by certified copies of official correspondence—that the suit was authorized from its beginning, the objection that the authority was not averred as a matter of pleading or proved formally as a matter of evidence, becomes a mere quibble.

IV.

The findings of fact were supported by sufficient evidence.

It appears from the report of the master that the testimony in three cases involving related transactions alleged to have been in pursuance of the com-

mon scheme, was taken at the same time, and that there was a stipulation that the testimony in one case should be considered as taken in the others.

L. H. Maisenbacher (R. 31), a witness for the Government, testified that he made a homestead entry in Ascension Parish at the solicitation of one Robert H. Cox, with whom he had an agreement that Cox should furnish the money as the agent of William H. Wright. The witness was to make commutation proof and give Wright title to one-half of the land. The *appellant* induced this witness to relinquish the entry. The appellant said that he had agreed to give one half his own land to Wright. (R. 32.) The witness's agreement was verbal; also written out in the form of Exhibit X–1. (See R. 48.)

James Tanner (R. 32) testified that he made an entry under agreement by which he was to give Bradford and Wright one-half of the land. He made the agreement with the *appellant*, who told witness that Wright and Bradford would furnish all the money to make the entry if the ~~latter~~ would make it and give one-half the land to Wright and Bradford. He made a deed to half his land to Wright and sold the other half to Bradford. He signed the agreement to do so out in the woods before he made proof. (R. 32.)

J. D. Lodwick (R. 33) testified that he made a homestead entry in Ascension Parish under an agreement with Cox to give one-half of the land to Bradford and Wright. He signed the written agreement (Exhibit X–1, R. 48) to that effect, which

he gave to Cox, and the latter sent it to Wright. Witness knew the appellant, who made an entry in the same part of the country and talked with witness about it and said that he had an agreement with Bradford by which he, appellant, was to give Bradford one-half the land. Witness was one of the parties interested in the business of making entries until appellant took charge of it. Appellant was interested in the matter because he said concerning one Z. W. Causey, when the latter had cut some timber from land that he had entered:

> That little scoundrel has got all the timber cut off of that land that I had set aside for Bradford—that 80 acres. (R. 33.)

Henry Nickens (R. 33) and *Byrd McCrory* (R. 34) both testified that appellant had asked them to make entries under agreements whereby they would convey one-half of the land entered to Wright, who was to furnish the money for making the entries (R. 33–34). Wright and the appellant tried to induce Nickens to sign an agreement. Cox made the same attempt with McCrory.

The testimony of *Robert H. Cox*, another witness for the Government, shows that he was employed by Wright to induce persons to make entries under agreements like those mentioned above, and that he secured about 37 persons to do so; that for this service Wright was to pay him $10 for each person, and actually paid him in eight cases, including that of the appellant P. E. Causey. (R. 44.)

Three forms of the contract alleged to have been made by the various entrymen were offered in evidence (R. 48), and the defendant Wright admitted that he wrote them, but claims that he did not know how they got out of his possession (R. 38).

The existence of the general conspiracy alleged in the bill is thus clearly established, and there is abundant evidence to show that appellant's entry was made in furtherance of the scheme. His commutation proof was made July 3, 1901. On August 2 he received a certificate of entry from the register of the land office and on the 23d he conveyed the land to the defendant Bradford for an alleged consideration of $800. (R. 8.) The answer alleges that this was a bona fide sale for full value; that on August 24 Bradford executed a deed granting appellant the right to buy back one-half the land at any time prior to January 1, 1905, for the sum of $750. Observe the absurdity of this defense. If Bradford sold Causey the scrip at $1.25 per acre (which he says was his price) (R. 38), the land cost Causey practically $200; but he sold the entire tract to Bradford for $800, reserving the right to repurchase one-half of it for $750. If this alleged contract had been carried out, Causey would have paid Bradford $200 for the scrip and $750 in money, making a total of $950, while he would have received only $800 from Bradford and would own only one-half of the land which he had entered. In other words, upon the closing of the transaction Causey would have paid Bradford $150 for taking one-half of his land.

As it can best be gathered from the incomplete record of the testimony, the truth seems to be practically as follows:

Causey would not sign the written agreement to convey one-half the land to Bradford or Wright, but attempted to evade the law by giving a note for $200, which he knew he would never pay. He admitted that he had asked Wright to lend money on the note "without any contract." (R. 41.) He accordingly gave a note for $200 (which it will be observed was approximately the money necessary to commute the entry). This he got back when he sold Bradford the land. (R. 42.) The following day he received from Bradford a deed granting him, Causey, the right to repurchase one-half of the land by January 1, 1905. This was Bradford's method of taking a mortgage on a half of the land for such money in excess of the price of the scrip as he advanced to Causey. Indeed, he testified that both he and Causey regarded the transactions of August 23 and 24 as a conveyance to Bradford of one-half the land and a mortgage on the other half, which Causey had the right to repurchase. (R. 40.)

As is well said by the special master, in view of the circumstances set forth, "not much direct testimony is needed to show that any one of the persons making transfers to Mr. Bradford for fictitious considerations, after having received scrip and advances, had agreed in advance to do so." (R. 21.)

The above sketch of the evidence makes no pretense at completeness. It is merely adduced to show that in this record there can be no sufficient reason for reversing the concurrent findings of fact of two courts and a special master.

CONCLUSION.

We submit that the action of the lower courts should be affirmed.

Respectfully submitted.

ERNEST KNAEBEL,
Assistant Attorney General.
S. W. WILLIAMS,
Attorney, Department of Justice.

JANUARY, 1916.

APPENDIX.

Letter from the Attorney General to the United States attorney authorizing the institution of suit and inclosed letter from the Secretary of the Interior to the Attorney General.

JULY 5, 1904.

WILLIAM WIRT HOWE, Esq.,
United States Attorney,
New Orleans, La.

SIR: I send you herewith a copy of a letter from the Secretary of the Interior to me, dated June 22, 1904, with its inclosures, relating to certain fraudulent homestead land entries in Ascension Parish, La.

If, after a careful examination of these papers, you are of the opinion that suits in equity, having for their object the cancellation of these patents, can be successfully prosecuted, you are directed to prepare and file the necessary bills.

Please advise this department of your action in the matter.

Respectfully,

W. H. MOODY,
Attorney General.

DEPARTMENT OF THE INTERIOR,
Washington, June 22, 1904.

The ATTORNEY GENERAL.

SIR: Referring to my letter of the 18th instant in which I quoted for your information from a report dated the 15th instant by the Acting Commissioner of the General Land Office in the matter of fraudulent

homestead entries in Ascension Parish, Louisiana, and charges of fraud against James L. Bradford and Wm. H. Wright in connection therewith (your file M. C. B., 1318–1903), I have the honor to submit herewith duplicate copies of a letter dated the 7th instant from the Commissioner of the General Land Office and certified copies of the record in each of the following entries in the New Orleans, Louisiana, land district, including a report thereon by Inspector of Special Agents George C. Hunt:

"Powhattan E. Causey, No. 21337, made March 19, 1900, for E. ½ NW. ¼, NE. ¼, SW. ¼, and lot 2, sec. 33, T. 10 S., R. 3 E., S. E. D. E. of river. Commuted to cash entry August 21, 1901. Patent issued February 28, 1902.

"Mattie L. Webb, No. 18306, made July 20 1897, for N. ½ NE. ¼, SW. ¼ NE. ¼, and SE. ¼ NW. ¼, sec. 22, T. 10 S., R. 3 E., S. E. D. E. of river. Commuted to cash entry December 11, 1900. Patent issued December 2, 1901.

"Zachary W. Causey, No. 18875, made February 14, 1898, for NW. ¼ sec. 26, T. 10 S., R. 3 E., S. E. D. E. Commuted to cash entry February 7, 1901. Patent issued December 2, 1901.

"James M. Chandler, No. 18969, made March 18, 1898, for S. ½ SE. ¼ sec. 27, NW. ¼ NE. ¼, and NE. ¼ NW. ¼ sec. 42, T. 10 S., R. 3 E., S. E. D. E. of river. Commuted to cash entry December 5, 1900. Patent issued February 3, 1902.

"Thomas J. Chandler, No. 20003, made April 12, 1899, for E. ½ SW. ¼, NW. ¼ SE. ¼ sec. 27, T. 10 S., R. 3 E., S. E. D. E. of river. Commuted to cash entry December 5, 1900. Patent issued December 2, 1901.

"Daniel G. Jones, No. 18457, made September 1, 1897, for lot 1 and S. ½ NW. ¼, and NW. ¼ NW. ¼

sec. 36, T. 10 S., R. 3 E., S. E. D. E. of river. Commuted to cash entry August 29, 1900. Patent issued May 8, 1901.

"James Taner, No. 19840, made February 16, 1899, for lots 8 and 9, sec. 31, T. 10 S., R. 4 E., S. E. D. E. of river. Commuted to cash entry October 23, 1900. Patent issued June 13, 1901."

The commissioner's report and recommendation also cover the entries of John Alexander and Florestan L. Berthelot in the same land district, but the papers in these cases, he advises, are in the hands of the receiver of the New Orleans land office, held subject to the order of the United States attorney for use in the criminal proceedings now pending against the said James L. Bradford and Wm. H. Wright, said entries being as follows:

"Florestan L. Berthelot, No. 19074, made May 2, 1898, for lots 6 and 7, sec. 31, T. 10 S., R. 4 E., S. E. D. E. of river. Commuted to cash entry August 10, 1901. Patent issued April 18, 1902.

"John Alexander, No. 21047, made January 2, 1900, for E. ½ NE. ¼, sec. 42, and SE. ¼ sec. 40, T. 10 S., R. 3 E., S. E. D. E. of river. Commuted to cash entry August 2, 1901. Patent issued March 21, 1902."

Inspector Hunt has reported these entries to be fraudulent, having been made in collusion with and in the interest of Bradford and Wright, whose modus operandi is fully explained in the commissioner's letter. The commissioner concurs in the recommendation of the inspector that suits be instituted to cancel the patent issued in each of the entries above mentioned.

The several reports of the inspector disclose that the title to the lands covered by the patents issued

to Powhattan E. Causey, Daniel G. Jones, Thomas J. Chandler, and James M. Chandler, according to the parish records, now stands in the name of James L. Bradford, and that title to the N. ½ NW. ¼ sec. 26, T. 10 S., R. 3 E., S. E. D. E. of river, included in the patent of Zachary W. Causey, and the SE. ¼ NW. ¼ sec. 22, T. 10 S., R. 3 E., S. E. D. E. of river, included in the patent of Mattie L. Webb, is also shown by the parish records to be in said Bradford.

It further appears that the lands covered by the patents issued to James Taner and Florestan L. Berthelot were also conveyed by the patentees to Bradford, who in turn conveyed them to the Southern Cypress Company, a company organized under the laws of Michigan and having offices in New Orleans and Chicago, in whom title now stands. It is the opinion of the commissioner that said company was not a bona fide purchaser.

The status of the land covered by the patent to John Alexander is not shown for the reason that, as stated, the papers in this case are in the hands of the receiver of the New Orleans land office. The commissioner states, however, that he believes it can be safely assumed that the title has not passed from Bradford, and if it has the purchase was not a bona fide one.

Accompanying the papers hereinbefore referred to are, under one certificate, copies of letters purported to have been written by W. H. Wright to Robert H. Cox in reference to the entry of lands in the New Orleans land district, and, under another certificate, copies of affidavits, letters, and other papers showing certain entries in said land district to have been made in the interest of James L. Bradford and William H. Wright.

In view of the showing of fraud appearing in these cases, the papers are submitted with the request that suits be instituted to cancel the patents issued therein, as recommended by the Commissioner of the General Land Office, if, in your judgment, such action is advisable and for the best interests of the Government.

Very respectfully,

E. A. HITCHCOCK,
Secretary.

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